



The Asia Foundation

**PROMOTING IMPROVED ACCESS TO JUSTICE
Community Legal Service Delivery in Bangladesh**

**House 3/B, Road 50, Gulshan-2
Dhaka, Bangladesh
+880-2-882-6941 to 46
Contact: Kim McQuay
Country Representative**

March 2007

TABLE OF CONTENTS

| | |
|---|-----------|
| EXECUTIVE SUMMARY | I |
| A. BACKGROUND AND JUSTIFICATION | 1 |
| A.1 PROGRAM ENVIRONMENT FOR ACCESS TO JUSTICE, GOVERNANCE REFORM, AND POVERTY REDUCTION..1 | |
| A.2 DONOR EXPERIENCE IN COMMUNITY LEGAL SERVICE DELIVERY.....2 | |
| A.3 GROWING DEMAND FOR SERVICES.....3 | |
| B. MAPPING COMMUNITY LEGAL SERVICE DELIVERY..... | 4 |
| B.1 MAPPING METHODOLOGY | 5 |
| B.2 LIMITATIONS OF THE MAPPING EXERCISE..... | 6 |
| B.3 MAPPING FINDINGS | 7 |
| B.4 CURRENT STATE OF ACCESS TO JUSTICE AND KEY CONSTRAINTS | 9 |
| B.5 PRESENT LANDSCAPE OF CLS | 10 |
| B.6 CASE TYPES AND PROPORTIONS IN CLS | 12 |
| B.7 IMPACT OF CLS ON THE POOR, WOMEN, AND OTHER MARGINALIZED POPULATIONS | 14 |
| B.8 CONSTRAINTS ON ACCESS TO JUSTICE BY THE POOR | 16 |
| C. COMPARATIVE ASSESSMENT OF ADR MODELS | 20 |
| C.1 MODELS OF ALTERNATIVE DISPUTE RESOLUTION | 20 |
| C.2 TRADITIONAL SHALISH AND NGO MONITORING OF SHALISH..... | 21 |
| C.3 NGO ORGANIZED COMMUNITY MEDIATION (MLAA, NAGORIK UDDYOG, BANCHTE SHEKHA, BNWLA, RDRS)..... | 22 |
| C.4 NGO EMPLOYEE MEDIATOR (ASK DHAKA OFFICE, BLAST, BRAC) | 24 |
| C.5 VILLAGE COURTS (MLAA)..... | 25 |
| C.6 ASSESSMENT CRITERIA | 26 |
| C.7 COMPARATIVE ASSESSMENT..... | 28 |
| C.8 ADVANTAGES OF THE CBO MEDIATION MODEL..... | 28 |
| D. MONITORING AND EVALUATION OF CLS | 29 |
| D.1 GENERAL FINDINGS | 29 |
| D.2 MONITORING AND EVALUATION APPROACHES | 30 |
| D.3 IMPLEMENTATION OF M&E SYSTEMS | 32 |
| D.4 CURRENT NGO APPROACHES TO MONITORING AND EVALUATION..... | 33 |
| D.5 MEASURING ENHANCED GOVERNANCE AND POVERTY REDUCTION | 36 |
| E. RECOMMENDATIONS..... | 38 |
| EXPAND COMMUNITY LEGAL SERVICE DELIVERY THROUGH A COORDINATED STRATEGY TO INCREMENTALLY ESTABLISH CLS FACILITIES AND CBO MEDIATION PANELS IN EVERY UNION OF THE COUNTRY..... | 39 |
| STRENGTHEN CLS THROUGH INNOVATIONS IN PROGRAM QUALITY, INSTITUTIONAL CAPACITY, AND OUTREACH ... | 43 |
| ENHANCE INTERACTION BETWEEN THE FORMAL AND INFORMAL JUSTICE SYSTEM THROUGH LEGAL AID SUPPORT AND REFERRAL MECHANISMS, PILOT VILLAGE COURT PROGRAMS, AND COMMUNITY-ORIENTED POLICING | 47 |
| PROMOTE CLS SUSTAINABILITY..... | 54 |
| STRENGTHEN CLS MONITORING AND EVALUATION CAPACITY | 56 |
| FACILITATE ENHANCED COMMUNICATION, COORDINATION, AND COLLABORATION AMONG CLS ORGANIZATIONS AND DONORS | 58 |
| SUPPORT LEGAL EMPOWERMENT STRATEGIES THAT LINK CLS WITH BROADER SECTORAL DEVELOPMENT | 60 |

LIST OF ANNEXES

- ANNEX A. Access to Justice Study Methodology
- ANNEX B Community Legal Services Mapping
- ANNEX C Access to Justice Constraints—Perceptions of NGO Leaders
- ANNEX D Top Access to Justice Constraints—Opinions of CLS NGOs

Field Study NGO Annexes

- ANNEX E Field Study NGOs—Location and Contact Information
- ANNEX F Field Study NGOs—CLS Budget and Donors
- ANNEX G Field Study NGOs—CLS Training Received
- ANNEX H Field Study NGOs—Mediation Case by Type, Resolution, and Acceptance
- ANNEX I Field Study NGOs—Comparison of Shalish Models

EXECUTIVE SUMMARY

Background

1. This report is intended to assist the United Kingdom Department for International Development (DFID) and other international development agencies to refine, and potentially expand, support to local partner organizations that promote improved citizen access to justice in Bangladesh. It also aims to assist in establishing clearer linkages between access to justice, governance reform, and poverty reduction strategies. It focuses primarily on the experience of non-governmental organizations (NGOs), which have played a leadership role in facilitating access to justice through community legal service (CLS) activities, but also draws linkages between the formal and informal justice sectors.

2. CLS activities typically include some combination of informal legal education and awareness raising, paralegal counseling, legal aid, alternative dispute resolution (ADR) through traditional *shalish* or other models of community-based dispute resolution, and legal advocacy and other specialty areas of focus. Lessons drawn can help to inform future access to justice strategies that may include: (i) extending the geographic coverage of CLS activities; (ii) expanding networks of local partner organizations; and/or (iii) refining (a) coordination efforts *among* CLS providers and *between* providers and their donor partners; (b) existing program strategies and assessment tools; and (c) linkages to broader national development goals.

3. **Program Environment:** Despite constitutional guarantees, the legal rights of the poor, women, and other marginalized populations in Bangladesh are routinely subject to violation. Inadequate public access to justice reflects factors such as poverty, inequitable power relations; traditional religious or cultural norms, lack of knowledge of legal rights, and lack of access to legal services. Anecdotal evidence and an emerging body of empirical analysis suggest that community legal service delivery helps to advance good governance, poverty reduction, and other development priorities by overcoming constraints on citizen access to justice and participation in governance. Access to justice constraints in Bangladesh are closely associated with a failure of governance and public institutions such as the police and the formal courts are compromised by corruption, capacity limits, and other governance-related problems.

4. **Past Support and Current Demand:** For more than two decades The Asia Foundation (Foundation) has provided support to a variety of local NGO partners to address access to justice issues. In the last decade, CIDA, DANIDA, the European Commission, the Government of Germany, NORAD, the Royal Netherlands Embassy, Sida, USAID, and other development partners have joined DFID in expanding support to local NGO partners for community legal service and work. Despite the expanding scope and scale of CLS activities and related donor investments, there is a persistent and growing demand for access to justice services. Local NGOs and DFID and other international agencies that support their efforts must make important strategic decisions on how demand for CLS can be most effectively and sustainably met.

4. **Study Components:** The study encompasses four core areas of focus:

- A **mapping** of the present geographic outreach or footprint of CLS activities in Bangladesh.
- Documenting the various **models of ADR** that are presently being followed by legal service providers, and assess the comparative performance
- Determining key institutional and human resource, political-economic, financial, and other **constraints** to the potential expansion or refinement of CLS delivery
- Assessing the quality and integrity of **monitoring and evaluation tools and methodologies** that are presently being used by CLS providers and development partners.

Mapping of Community Legal Services

5. A principle objective of this study was to map the locations and types of legal services conducted nationwide, with the aim of identifying gaps in geographic coverage and in the types of services available to different communities. The mapping methodology followed in this study included identification of the organizations that provide CLS by location, as the basis for informed strategies to scale-up services in a comprehensive and sustainable manner. Information was gathered from mailed survey responses, field research interviews with local NGOs, and office interviews with large NGOs with CLS programs.

6. **Mapping Limitations:** While the mapping exercise represents a “best effort” result within the limits of the time and resources available for the study, not all CLS activities are represented, nor has 100 percent accuracy been achieved in representing the exact geographic location of each large NGO’s community legal services. The mapping indicates that large areas of the country have not been reached by CLS activities, and that most large NGOs involved have concentrated their activities in a limited number of areas. One of the largest NGOs, the Bangladesh Rural Advancement Committee or BRAC, operates legal service activities primarily for its clients and has not been included in the mapping.

7. **Mapping Findings:** The mapping exercise focuses on legal services that are actively implemented or guided by the larger CLS NGOs. This distinction is important in developing recommendations for service expansion. The mapping exercise indicates the following:

- **Community legal services are available in an estimated 35 to 40 percent** of Bangladesh.
- Despite the expanding footprint of CLS, **certain areas are not adequately served**. These areas include the Chittagong Hill Tracts, the northern districts in the Chittagong division, and much of the northern Dhaka division, the central Rajshahi division and the Sylhet division. (*A GIS map of CLS services is provided on the final page of this summary.*)
- **Large NGOs focusing on CLS guide activities in about a third of the country**
- **Mediation and legal aid are by far the most common types of CLS**; fully supported village court or arbitration council services account for 10 percent or less of CLS provided.
- **No large CLS organization serves more than 10 percent** of the country.

Current State of Access to Justice and Key Constraints

8. Drawing on statistical data maintained by CLS NGOs and a combination of opinion surveys, focus group discussions, and individual interviews with beneficiaries, the study team developed:

- A **profile of the typical types of cases** undertaken through legal aid or ADR;
- An **assessment of the impact of CLS on the poor**, as perceived by beneficiaries; and
- A supply-and-demand **ranking of the primary constraints or obstacles to justice**.

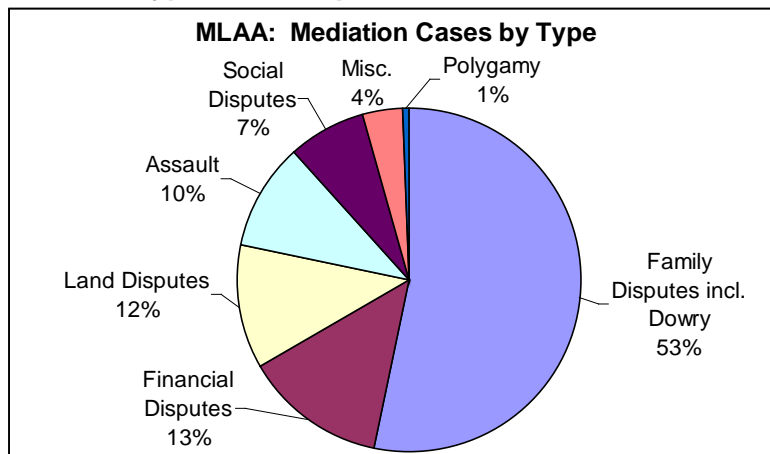
9. **Current Landscape:** While a few large NGOs are dedicated to CLS and offer a full range of services, most small to mid-sized NGOs conduct legal service activities in addition to offering other development services such as micro-credit and have some link with the larger CLS NGOs. Organizational development and learning varies widely and most NGOs depend heavily on donor support. Almost all focus on individual client services while only a few engage in higher-level legal empowerment activities that aim to equip entire communities to use the law to advance their collective interests. CLS delivery is part of broader framework of justice sector reform that includes the formal justice sector. Donors have tended to switch from emphasizing investments in either the formal or the informal sector depending on perceived receptivity of the government to reforms. The increasing number of donors in informal justice programming could benefit from improved coordination. Among the busy CLS NGO community, opportunities for dialogue and information sharing are few. Finally, considerable room exists for specialty research on ADR, legal empowerment, and monitoring and evaluation experience.

10. **CLS Case Types and Proportions:** While not all organizations classify cases in the same way, information from large and small NGOs and from beneficiaries indicated the same broad trends.

- **Family related disputes are by far the most common case type**, with women subject to physical violence, psychological intimidation, or material deprivation.
- **Land related disputes comprise a smaller portion** of CLS cases, together with incidents of theft and disputes involving money, although the accuracy of current categorization schemes for land related disputes is an area of some debate.
- **A small fraction of total cases involve rape and other serious crimes** of violence against women, such as acid throwing.

11. The chart below presents the relative proportions of case types as documented by Madaripur Legal Aid Association (MLAA), a pioneer in mediation services.

Comparison of CLS Case Types and Proportions - MLAA



12. **Impact of CLS:** With limited time and resources, the study team confined its focus to a narrower assessment of direct impact of CLS on its beneficiaries employing approaches ranging from focus group discussions (FGDs) and individual interviews to reviews of records on compliance with mediation settlements. It found that NGO record keeping on long-term compliance with mediation settlements is strikingly limited, and had to rely primarily on evidence derived from FGDs and beneficiary interviews. Impact questions on the links between CLS and material poverty, and CLS and government responsiveness yielded the following:

- **96 percent of beneficiaries interviewed believe that CLS helps people to become less poor:** This strong opinion may reflect the fact that a large number of mediation settlements and cases (over 70 percent of the total for some organizations) involve money—including dowry, dower, maintenance or other family-related disputes with monetary implications.
- **88 percent of opinion leaders that participated in focus group discussions believe that CLS helps the government to become more responsive to the poor.** This striking perspective emphasizes the potential of collaborative working relations with government.

Constraints on Access to Justice by the Poor

13. For purposes of the study, constraints or obstacles to access to justice refer to aspects of formal justice institutions or their functioning. Some constraints keep the poor away from the courts or other forums of dispute resolution, while others prejudice the outcome.

14. **NGO Perspectives:** The study team posed a set of questions designed to rate constraints to access to justice to smaller, field NGOs and their larger counterparts. Four broad responses emerged.

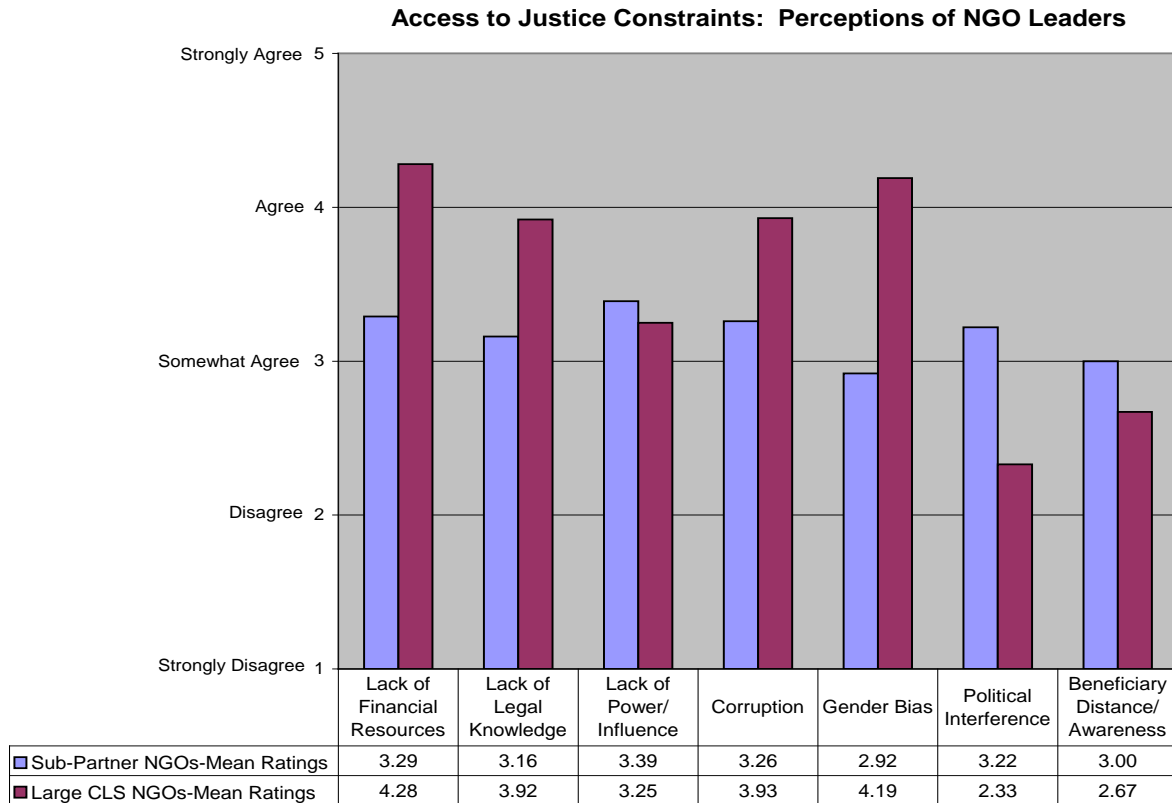
- **Obstacles to access to the formal justice system (courts) figure strongly**, including prohibitive cost, inconvenient travel distance, corruption, and gender bias.
- **Lack of awareness of legal rights and alternative mechanisms for dispute resolution** prevents many citizens—and women in particular—from seeking justice.
- **Interference by local politicians and wealthy elites, including threats of violence**, was rated as a major constraint to citizen access to justice by the smaller, local NGOs surveyed.
- **Threats of physical violence against complainants and witnesses, and social pressure from families concerned about their reputation** keep many women victims from coming forward.

15. **Beneficiary Perspectives:** Beneficiaries perceived the constraints to justice somewhat differently. A review of their responses yielded the following.

- **Beneficiaries tend to place relatively greater emphasis on lack of financial resources** as a constraint than do NGO service providers, despite the fact that NGOs commonly provide travel money and cover court and lawyers’ fees as part of their legal aid services.
- **Beneficiaries place relatively more emphasis than NGOs do on a lack of awareness of services.**
- **Beneficiaries and NGOs both rate lack of legal knowledge, lack of influence by the poor, and corruption in the formal courts as major impediments to access to justice.** CLS programs are designed to alleviate constraints among the poor but do not directly address formal court corruption.

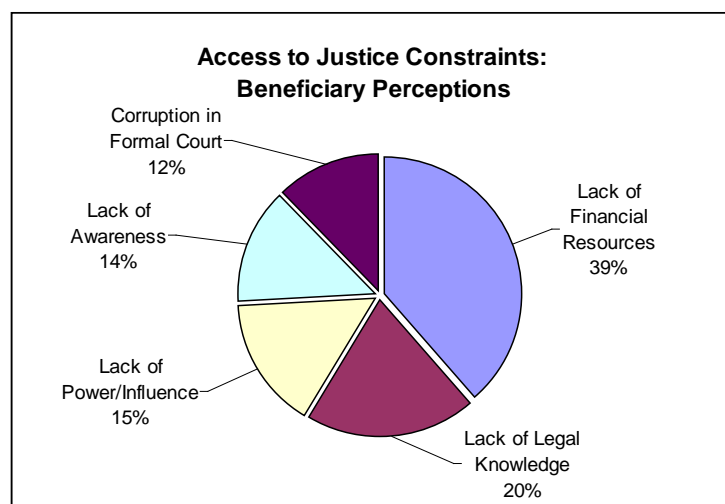
16. The chart below shows the results of the constraint assessment for small and large NGOs.

NGO Perceptions of Access to Justice Constraints



The figure below shows the top five constraints identified by beneficiaries.

Beneficiary Perceptions of Access to Justice Constraints



Comparative Assessment of ADR Models

17. Alternative dispute resolution (ADR) encompasses a wide range of processes that are designed to settle disputes outside the formal court setting. The several NGO models of ADR can be categorized more broadly in terms of *how* mediation sessions are conducted—whether by mediators who are employees of (or otherwise engaged by) a CLS NGO, or by citizen members of community-based organizations (CBOs).¹ To these two categories can be added traditional *shalish* and village courts, the two other alternatives to formal courts most frequently observed.

18. **ADR Models:** This assessment groups ADR models into four categories.

- **Traditional *shalish* or mediation**, and NGO monitoring of traditional *shalish* - *Shalish* is the longest established form of community-based dispute resolution in Bangladesh. The parties to a legal dispute and their family members are summoned to assemble in the presence of a panel of village elders and interested observers to discuss the problem and reach a conclusion. It is often the first and only option available to the poor.
- **NGO organized community mediation** - The most common form of NGO interaction with *shalish* involves the organization of *shalish* panels and sessions by a CLS organization. This approach derives in large part from the pioneering efforts of MLAA of 25 years ago.
- **NGO employee mediated ADR** - A few NGOs utilize individual staff members to mediate conflicts between disputants, without the involvement of *shalish* panels.
- **Village Courts**² - While differing in modality and legal status from the models above, the quasi-governmental village court process is also a form of alternative dispute resolution. It combines local government or UP representatives and community members on panels that deliver legally binding judgments.

¹ Community-based organizations or CBOs are local groups of community members active in community concerns. Members of these groups are volunteers. For the purposes of this study, CBOs refer to those volunteer groups (formed with the assistance of NGO staff) that pursue community legal service activities, typically conducting mediation panels and raising legal awareness at the ward or sub-union level.

² It is understood that a combination of factors distinguish the village court mechanism from other community-based dispute resolution mechanisms; however, for purposes of analysis the village court is included in this category.

19. **Assessment Criteria:** To evaluate the various ADR approaches, the study team designed a set of assessment criteria that are based on the need to develop recommendations for an effective, sustainable, scalable, and efficiently harmonized investment strategy for community legal services delivery. These were:

- **Beneficiary Access:** Distance—or more precisely, *proximity*—is important not only because of the time and expense involved in reaching the ADR venue, but also because, for some beneficiaries, the closer the venue is to their home community the less intimidating it is.
- **Process Justice:** The quality and integrity of justice rendered by ADR can be compromised by influences such as (i) a dynamic of arbitration rather than mediation, forcing the terms of settlement on either or both parties, (ii) prevalence of traditional or conservative values taking precedence over the law or common sense solutions, (iii) political biases or interests and (iv) gender biases that compromise the interests of female parties.
- **Settlement Enforcement:** The ability to apply *social pressure* and *legal sanction* to ensure compliance with the mediation settlement over the long term.
- **Social Change Impact:** Certain ADR approaches are better positioned to effect social change at the local level, and these same changes in values will make it more likely that community members will continue to conduct ADR on their own, accept ADR settlements, and/or enforce compliance with these settlements after donor-funded NGO assistance ends.

20. **Comparative Assessment:** The matrix below presents an assessment of the four broad ADR approaches using the four criteria described above. The poor, fair, and good rankings assigned are based on qualitative interview data and an understanding of the workings of each ADR process. Each ranking was assigned a numerical equivalent, with 1 being good and 3 being poor. The values for each broad criterion were determined by averaging the scores for each model.

A Comparative Assessment of ADR Approaches

| <i>Dimension</i> | <i>Traditional Shalish</i> | <i>CBO Mediation</i> | <i>NGO Mediator</i> | <i>Village Court</i> |
|-----------------------------------|----------------------------|----------------------|---------------------|----------------------|
| Beneficiary Access | | | | |
| Cost to Clients | Good | Good | Good | Fair |
| Distance from Clients | Good | Good | Fair | Good |
| Beneficiary Access Ranking | 1 | 1 | 1.5 | 1.5 |
| Process Justice | | | | |
| Mediation, not Arbitration | Fair | Good | Fair | Poor |
| Consistent with Law | Poor | Fair | Fair | Good |
| Potential Political Bias | Fair | Good | Good | Poor |
| Potential Gender Bias | Poor | Fair | Good | Fair |
| Process Justice Ranking | 2.5 | 1.5 | 1.5 | 2.25 |
| Enforcement of Settlement | | | | |
| Community Social Pressure | Good | Good | Fair | Fair |
| Access to Legal Sanction | Poor | Fair | Fair | Good |
| Enforcement Ranking | 2 | 1.5 | 2 | 1.5 |
| Social Change Impact | | | | |
| Female Representation | Poor | Good | Fair | Fair |
| Community Participation | Fair | Good | Fair | Fair |
| Instills Human Rights Culture | Poor | Good | Fair | Fair |
| Social Change Ranking | 2.66 | 1.0 | 2.0 | 2.0 |

21. **Advantages of the CBO Mediation Model:** The CBO mediation model scores well on all four assessment criteria. It provides good beneficiary access, process justice, means to enforce settlements, and, of particular importance, impact on social change. By contrast, other approaches have more significant drawbacks:

- The **traditional *shalish*** process tends to reinforce prevailing norms, which may pressure parties into settlements and disadvantage women.
- **Village courts**, though ostensibly based in law, may be subject to several process justice issues, many of which arise because of the dominant position of the UP chairperson.
- **NGO employee-conducted mediations** can be quite positive in terms of access and process, but may lack the enforcement and social change advantages of a community-based process.

Monitoring and Evaluation of CLS

22. Sound monitoring and evaluation systems serve multiple purposes, meeting donor agency requirements for measuring effectiveness and strengthening NGO capacity and strategic planning decisions. Collaborative refinement by donors and NGOs make M&E tools especially effective.

23. **General Findings:** Several key findings on M&E emerged from the access to justice study.

- M&E systems vary considerably but are almost universally applied by CLS organizations.
- Donor requirements drive CLS organizations to introduce M&E systems.
- Smaller, community-based organizations primarily involve volume counts of basic services.
- Larger CLS organizations have the greatest capacity to design and implement sophisticated M&E systems, particularly if supported by donors' technical assistance.
- The study team found no examples of organizations linking access to justice programs with governance reform and poverty reduction.
- There is an urgent need for greater attention to and investment in M&E systems, methodologies, and staff — particularly in cross-project, cross-donor standardization.

24. **Monitoring and Evaluation Approaches:** There are arguably as many different approaches to measuring the impact of CLS programs. M&E tools span a scale of complexity that ranging from simple estimation of target beneficiaries reached by trainings, more detailed record-keeping on clients served by legal aid or ADR, to sophisticated analytical tools probing the linkage between such services and economic advancement and citizen participation in governance. The Millennium Development Goals, the national poverty reduction strategy, and pro-poor growth concepts have increased donor, NGO and Government of Bangladesh interest in such linkages. Most M&E in the sector is *conventional*, a basic counting of activities and outputs. Some organizations conduct limited follow-up monitoring on compliance.

25. Measuring *secondary* changes that occur as a result of CLS interventions in the context of family and/or community practices is more difficult. These include changing patterns in the payment of dower and maintenance, declines in arbitrary divorce, reduction in domestic violence, and participation by marginalized citizens in local government. Monitoring and evaluation of CLS activities with the aim of informing strategic program planning is no simple task, and requires thoughtfully devised tools and strategies and excellent communication between local organizations and donor partners. Future program strategies should aim to facilitate more regular dialogue among CLS agencies and their donors.

26. **NGO Perspectives on Donor Reporting Requirements:** Three primary points emerged from discussions with the CLS organizations studied:

- *First*, many expressed genuine **frustration** that M&E reporting is the primary basis of interaction with donors. Several called for more face-to-face contact and project site visits.

- *Second*, CLS NGOs indicated that the reporting **workload** for M&E is frequently under-estimated and under-appreciated by their donor partners.
- *Third*, CLS organizations reported that the complex nature of some donor M&E systems generate such a **volume of information** that it is difficult to see the forest for the trees. Some suggest that complex M&E systems are only clear to outside specialists and that these systems fail to equip CLS NGOs to understand whether programs are succeeding or failing.

27. Notwithstanding these concerns, CLS organizations appreciate the necessity of M&E requirements.

28. **Measuring Enhanced Governance and Poverty Reduction:** The development of assessment tools to establish sound connections between CLS interventions and improvements in the economic circumstances and quality of life of disadvantaged populations poses serious challenges of methodological design, empirical rigor, and patience. It is difficult to actually prove this point on the basis of robust empirical evidence. A seven-country study on *Legal Empowerment for Supporting Governance* that The Asia Foundation conducted on behalf of the Asian Development Bank in 2001 found some evidence that CLS contributes to good governance and poverty reduction but further work is warranted.

Recommendations

29. Study recommendations are intended to contribute to the program planning of all donor agencies that support the CLS activities of local NGO partners and share a common commitment to improved coordination and harmonization of program strategies and investments.

RECOMMENDATION 1:

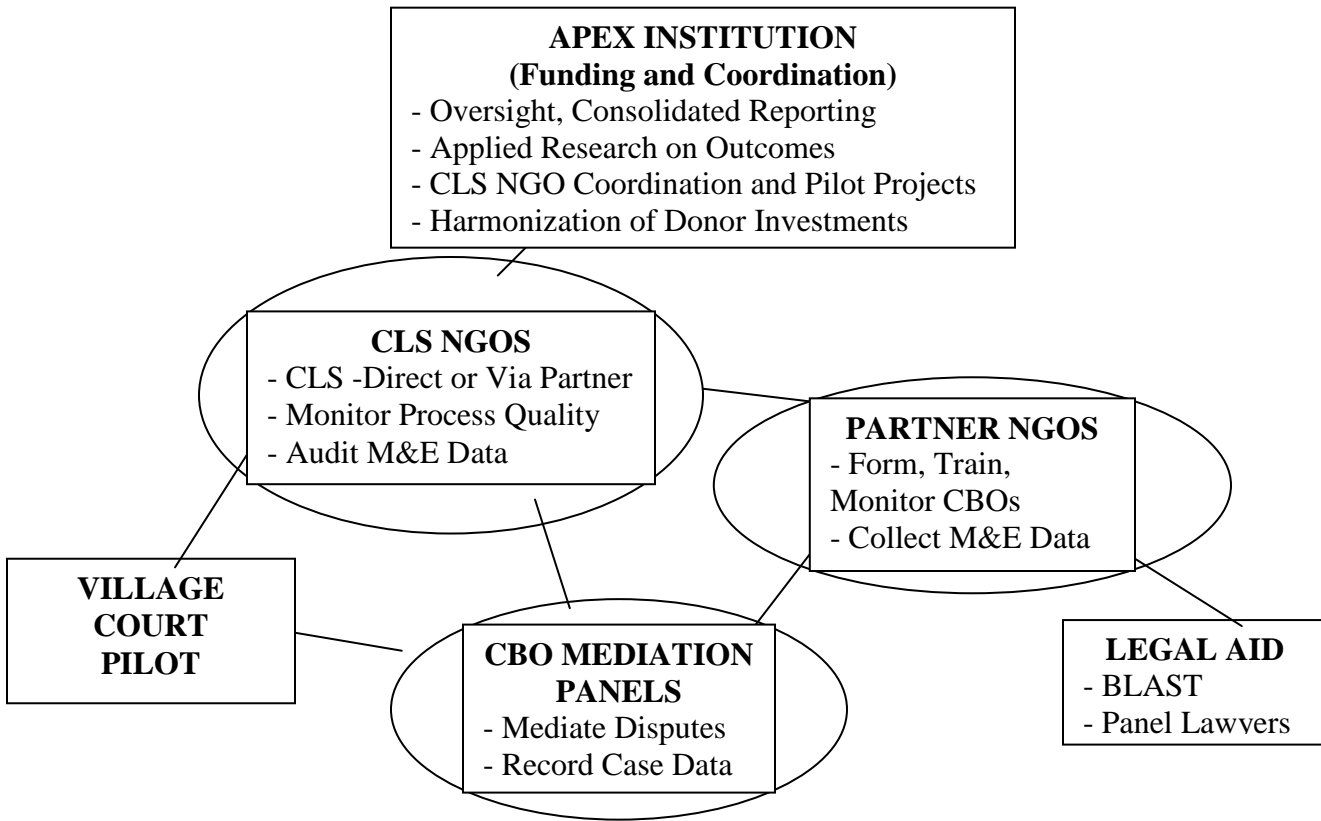
Expand community legal service delivery through a coordinated strategy to incrementally establish CLS facilities and CBO mediation panels in every union of the country

30. **Key Issues:** (i) CLS programs promote improved access to justice, (ii) links between large CLS provider NGOs and community-based organizations greatly enhance CLS delivery and (iii) the CBO mediation model of alternative dispute resolution provides the greatest combination of benefits

Recommendations:

- ***Support an expanded national CLS network:*** A coordinated national network of CLS activities should include legal awareness raising, paralegal counseling, alternative dispute resolution, legal aid referral, client representation in court, and select legal advocacy initiatives. Larger CLS organizations would work through intermediary NGOs to guide CBO mediation panels.
- ***Select intermediary NGOs to support CBO mediation:*** The CBO mediation model is the approach of choice for CLS NGOs that have expanded services. Selecting good intermediary, multi-service NGOs that enjoy local goodwill is important for CBO mediation success.
- ***Balance standardized approaches with individual NGO autonomy:*** The proposed strategy leaves CLS organizations free to conduct their own programs with stronger communication and support channels and more productive donor-level coordination.
- ***Three-tiered program delivery structure:*** The proposed multi-tiered program delivery structure illustrated on the following page would create a national framework through which DFID and other donor agencies could expand CLS services in close coordination. This approach would address CLS challenges and accommodate innovations in program quality, institutional capacity, and service outreach noted in Recommendation 2 below.

Figure 5: CLS Expansion Structure



- *Apex funding and coordinating institution:* An experienced funding and coordinating institution (or combination of institutions) would work with donors and NGOs to refine program strategy; enter into letters of agreement, administer grants and technical assistance, monitor program and financial compliance; and pursue strategies for reporting harmonization, applied M&E and specialty research.
- *National-level CLS NGOs:* It is proposed that national CLS NGOs expand proven and preferred CLS and ADR models, and that the results of the various approaches be monitored, and evaluated, with a focus on *process quality* and *auditing of client service data*.
- *Intermediary partner NGOs:* Mid-sized partner NGOs would be trained and monitored by the larger national-level CLS NGOs. These intermediary NGOs would also provide legal aid support for cases that are best referred to the courts through BLAST or panel lawyers
- *Community-based Organizations:* CBOs established and/or trained by intermediary partner NGOs—or by staff of larger CLS NGOs—would conduct mediation sessions and community-based functions.

RECOMMENDATION 2:

Strengthen CLS through innovations in program quality, institutional capacity, and outreach

32. ***CLS Program Enhancement***

- **Key Issues:** (i) Improved access to justice involves individual support services and broader societal change, and (ii) persistent gender equity issues exist.
- **Recommendations:** (i) refinement of ADR tools and methodologies, (ii) refinement of approaches to addressing gender equity, and (iii) recognition of the value of local experience and strategies.

33. *CLS Institutional Enhancement*

- **Key Issues:** (i) CLS requires enhanced institutional capacity and (ii) planning is required for a smooth transition in CLS leadership.
- **Recommendations:** An enhancement of institutional and human resource capacity is needed.

34. *Enhancing CLS Outreach*

- **Key Issues:** (i) Donor and NGO coordination is key to effective expansion into new geographic areas and (ii) stimulating public demand for CLS deserves greater emphasis.
- **Recommendations:** (i) Strategic approaches to geographic outreach and an incremental rollout of the national program and (ii) greater information outreach to stimulate CLS demand.

RECOMMENDATION 3:

Enhance interaction between the formal and informal justice system through legal aid support and referral mechanisms, pilot village court programs, and community-oriented policing

35. *Facilitate complementary linkages between alternative dispute resolution and legal aid mechanisms*

- **Key Issues:** (i) CLS requires a combination of ADR and formal litigation, (ii) BLAST legal services offer several advantages, (iii) the threat of litigation is a powerful incentive to mediation, and (iv) the government legal aid fund can benefit from NGO experience.
- **Recommendations:** (i) Reciprocal linkages between CBO mediation and legal aid, and (ii) increased legal aid referrals and reduced mediation services for BLAST.

36. *Undertake a small-scale pilot initiative to facilitate and assess the interaction of CBO mediation programs offered in select unions that have active village courts programs*

- **Key Issue:** Further examination is needed of the role of village courts in improving access to justice.
- **Recommendation:** Establish a pilot project to assess effectiveness and sustainability of interaction of CBO mediation and village courts.

37. *Expand community oriented policing*

- **Key Issues:** (i) Public security issues are many and community-police relations are poor, (ii) political space exists for criminal justice reform, top-down reform efforts should be complimented with bottom-up interventions, and (iii) best practice models exist for application in Bangladesh. Since September 2003, The Asia Foundation has utilized its own resources to implement a sequenced strategy for the introduction of pilot community policing programs with a rise in police-community trust, and drops in criminal activity in those communities and broader interest generated from police, government officials, civil society and the media.
- **Recommendation:** Expand community-oriented policing programs to establish a model practice for improving relations between police and the citizens in Bangladesh and promoting mutual cooperation on crime prevention and public security.

RECOMMENDATION 4:

Promote CLS sustainability

38. **Key Issue:** Diverse views exist on achieving optimal sustainability in a challenging context.
Recommendation: All three potential routes to sustainability should be explored as part of the proposed national program expansion.

- *Sustainability via alternative funding:* Increasing access to government legal aid funds and seeking a higher per-case allowance for the poor can defray part of court costs.

- *Sustainability via alternative institutions:* Encouraging large national or regional social service NGOs to follow the BRAC approach in offering legal services to their clients using pre-existing physical and community group infrastructures allows for minimal costs.
- *Sustainability in objective:* The advantages of CBO-administered ADR in effecting social change arguably make it more likely that community members will continue to conduct ADR on their own, accept ADR settlements, and/or enforce compliance after donor funding has ended. The proposed structure is designed to emphasize this route to sustainability.

RECOMMENDATION 5:

Strengthen CLS monitoring and evaluation capacity

39. **Key Issue:** Monitoring and evaluation capacities vary widely.

Recommendations: (i) Balance sophistication of analysis with ease of application in M&E requirements, (ii) standardize M&E tools among donors in CLS sector, (iii) ensure process and data quality through auditing, (iv) monitor settlement duration using a sample-based evaluation approach, and (v) use well-designed survey methods to measure CLS linkages to poverty and governance outcomes.

RECOMMENDATION 6:

Facilitate enhanced communication, coordination, and collaboration among CLS organizations and donors

40. ***Enhance dialogue and information sharing among CLS NGOs***

- **Key Issue:** Few opportunities exist for dialogue and information sharing among CLS organizations and program specialists.
- **Recommendations:** (i) Utilize a value-added incentive approach to coordination, building on expressed CLS NGO desires to work towards a coalition, (ii) instill a strong sense of ownership among local partners by gradually handing leadership to them, and (iii) cultivate opportunities for law and social science students to support CLS.

41. ***Enhance donor coordination and harmonization***

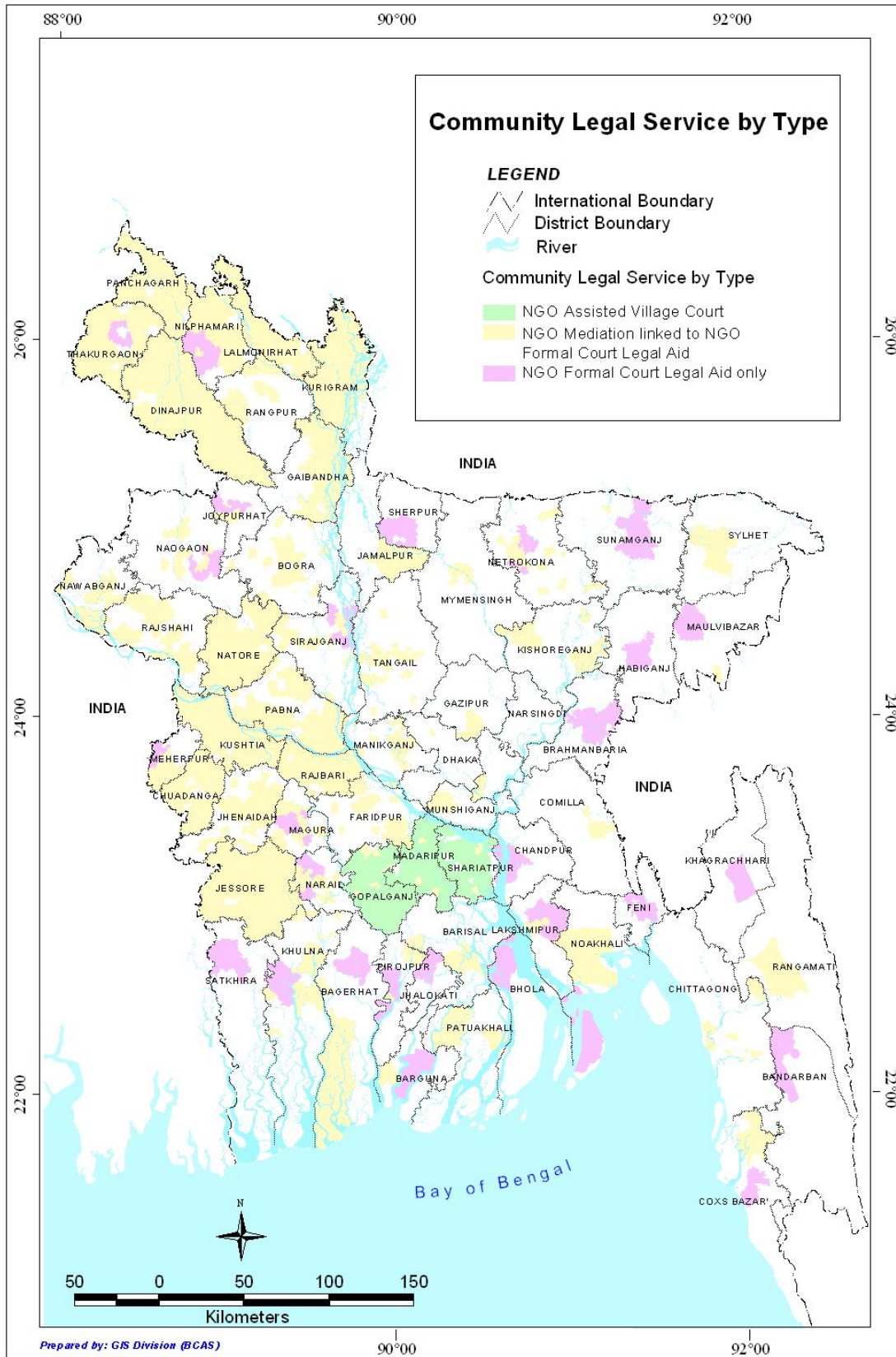
- **Key Issue:** Commitment but few practical arrangements exist for donor coordination.
- **Recommendations:** Practical strategies for enhanced donor coordination include (i) harmonizing donor reporting requirements for CLS NGOs building on standardization of M&E tools recommended above, and (ii) harmonizing donor investment to ensure no geographic overlap in competing (as opposed to complementary) ADR activities.

RECOMMENDATION 7:

Support legal empowerment strategies that link CLS with broader sectoral development initiatives

42. **Key Issue:** Advancement of the rights and interests of individual beneficiaries through individual client services only gradually contributes to broader awareness raising and collective impact on societal change. Higher-order legal empowerment initiatives complement conventional CLS activities by helping to equip entire communities—and women and disadvantaged groups in particular—to use legal and administrative processes and structures to access services and opportunities.

Recommendation: DFID and other donors are encouraged to explore opportunities to link CLS programs with their broader investments in sectoral development activities in the fields of education, public health, enterprise development, environmental conservation and resource management, and other areas. The proposed national expansion strategy would serve as the basis for select pilot initiatives to integrate CLS activities in sectoral development activities, drawing on the technical support of national-level CLS organizations and intermediary NGO partners.



A. BACKGROUND AND JUSTIFICATION

1. This report is intended to assist the United Kingdom Department for International Development (DFID) and other international development agencies to refine, and potentially expand, support to local partner organizations for activities that promote improved citizen access to justice in Bangladesh. It also aims to assist in establishing clearer linkages between access to justice, governance reform, and poverty reduction strategies. It focuses primarily on the experience of non-governmental organizations (NGOs), which have played a leadership role in facilitating access to justice for the poor, women, and other marginalized populations in Bangladesh through a combination of community legal service (CLS) activities, while at the same time drawing linkages between the formal and informal justice sectors. CLS activities typically include some combination of informal legal education and awareness raising, paralegal counseling, legal aid, alternative dispute resolution (ADR) through traditional *shalish* or other models of community-based dispute resolution, and legal advocacy and other specialty areas of focus. Lessons drawn from an objective review of experience to date can help to inform future access to justice strategies that may include: (i) extending the geographic coverage of CLS activities; (ii) expanding networks of local partner organizations; and/or (iii) refining (a) coordination efforts *among* CLS providers and *between* providers and their donor partners; (b) existing program strategies and assessment tools; and (c) linkages to broader national development goals.

A.1 Program Environment for Access to Justice, Governance Reform, and Poverty Reduction

2. Despite constitutional guarantees of equal rights and access to justice, the legal rights of the poor, women, and other marginalized populations in Bangladesh are routinely subject to violation or encroachment. Inadequate public access to justice reflects a combination of factors. They include poverty; inequitable power relations; traditional religious values and cultural norms that pose particular problems for women; lack of knowledge of legal rights and obligations on the part of citizens and public officials; and lack of access to, or knowledge of how to access, legal support services.

3. In recent years, there has been an increasing focus on the relationship between access to justice, governance, and poverty reduction. A wealth of anecdotal evidence and an emerging body of empirical analysis suggest that community legal service delivery helps to advance good governance, poverty reduction, and other development priorities by overcoming constraints on citizen access to justice and participation in governance. In addition to improvements in income and material circumstances, poverty reduction should ideally encompass the informed participation of disadvantaged populations in policy, administrative, and other decisions that affect them—both because such participation is inherently important to their quality of life, and because it can actually help to improve their material circumstances. When this includes citizen or community participation in legal, administrative, and other public decision-making processes to which they are entitled but are traditionally barred as a result of the combination of factor identified above, improved access to justice contributes to good governance.

4. The role and impact of CLS ranges from imparting basic knowledge of law and rights to providing the disadvantaged with the skills and advocacy tools that they require to confidently engage in legal and other public decision-making processes. The positive benefits of enhanced access to justice and associated legal empowerment include: (i) increased general awareness of rights and obligations; (ii) greater knowledge of specific legal rights and issues of relevance to domestic status and circumstances or economic livelihood; (iii) enhanced practical legal skills on which citizens can draw in asserting their legal rights or completing administrative procedures; (iv) greater access to the formal legal system and/or informal dispute resolution mechanisms; (v) increased public confidence and expectations in dealing with legal and other public agencies and procedures; (vi) more effective citizen participation in public decision-making processes; (vii) successful participation in legal implementation and government decision-making; (viii) greater sensitivity, responsiveness, and accountability on the part of government officials; (ix) enhanced participation in law, regulatory, and budget reform; and (x) improvements in material circumstances that result from the preceding benefits.

5. Access to justice constraints in Bangladesh are closely associated with the failure of governance. The performance of public institutions and officials that are tasked with facilitating citizen access to justice—including police and other law enforcement agencies, the formal courts, and administrative agencies—are compromised by corruption, limitations in professional capacity, and other governance-related problems.

6. While marginalized populations face a variety of legal problems, those most frequently encountered tend to involve family law matters that affect the rights, security, and legal entitlements of women and property disputes between neighbors and family members. Those with sufficient economic means, stature, and connections may be in a position to choose among a combination of legal support services, including the formal court system, administrative mechanisms that facilitate licenses, permits, and other legal requirements, or community-based alternative dispute resolution mechanisms such as the traditional *shalish*. In contrast, those who lack financial resources and social leverage must depend on a more limited range of options, and are more susceptible to manipulation or abuse when accessing available support mechanisms.

A.2 Donor Experience in Community Legal Service Delivery

7. For more than two decades The Asia Foundation (Foundation) has provided support to a variety of local NGO partners to address access to justice issues through CLS activities. These include (i) specialty legal service providers such as the Madaripur Legal Aid Association (MLAA) whose work focuses specifically on legal support functions; (ii) social development organizations such as the Jessore-based Banchte Shekha that provide CLS as part of an integrated approach to women's empowerment and community development; and (iii) organizations that focus on particular issues such as women's rights and empowerment, environmental law, or human rights monitoring and advocacy, or that have successfully introduced CLS as a complement to sectoral development work in public health and other specialty areas. In the last decade, CIDA, DANIDA, the European Commission, the Government of Germany, NORAD, the Royal Netherlands Embassy, Sida, USAID, and other development partners have joined DFID in expanding support to local NGO partners for CLS and related human rights and legal empowerment activities. Their support has been complemented by the

work of the Asian Development Bank (ADB), CIDA, Danida, the World Bank, and other agencies in the formal justice sector.

8. The expanding community of domestic legal service providers includes organizations that operate with a particular geographic focus; larger organizations such as the Bangladesh Legal Aid and Services Trust (BLAST) that operate through local branches or affiliate organizations at the district or community level; and organizations such as Ain o Shalish Kendra (ASK), the Bangladesh Environmental Lawyers Association (BELA), and Odhikar that work in niche areas or complement the efforts of community organizations through national-level legal and human rights advocacy, public interest litigation, and related program activities focusing on women's rights, environmental law, and other areas. The University of Dhaka Department of Law and a few private law colleges have established innovative legal aid and clinical teaching programs that provide law students with an opportunity to contribute to CLS delivery through internships and other working relations with NGOs. The CLS model has recently been expanded by the Foundation and other development partners to include pilot community-oriented policing programs and preliminary engagement with elected union councils (union parishads) and municipalities to strengthen their capacity to fulfill their statutory "village court" function in facilitating community access to justice and dispute resolution.

A.3 Growing Demand for Services

9. Despite the expanding scope and scale of CLS activities and related donor investments, there is a persistent and growing demand for access to justice services. The positive benefits of CLS programs in communities served by them fuel demand in adjacent areas or in more remote communities that are not reached by existing services. The work of NGO partners is recognized as an essential complement to concurrent formal justice sector reform initiatives whose focus on improved judicial administration, criminal justice reform, and other needs is designed to benefit the poor but will necessarily take greater time to register intended impact on the lives of the disadvantaged populations. Experienced NGOs such as MLAA and ASK continue to play valued technical resource roles in supporting the work of other organizations (including those that are new to CLS) through training, technical assistance, and leadership models. For example, the "Madaripur model" of ADR has informed the work of BLAST and other CLS providers, while ASK and other organizations provide alternative models, together with valued technical support to both smaller community-based organizations and large national NGOs such as the Bangladesh Rural Advancement Committee (BRAC).

10. DFID and other international agencies are presently contemplating the refinement and potential expansion of their support for CLS work and improved coordination of efforts, and exploring opportunities to forge clearer linkages between access to justice, rule of law, institutional and governance reform, and poverty reduction strategies. This strategic planning process will benefit from reflection on experience to date and examination of the various CLS approaches taken by local NGOs and the donor partners that support their work. Lessons drawn from experience and good practice can inform future access to justice strategies.

11. In building on experience to date, local CLS organizations and DFID and other international agencies that support their efforts must make important strategic decisions in

determining how demand for CLS can be most effectively and sustainably met. Given the demands placed on them in managing complex programs and responding to day-to-day issues, it is not surprising that NGO leaders and CLS professionals have little opportunity to meet and share experience, to reflect on issues and opportunities beyond the day-to-day program responsibilities and reporting requirements that dominate their attention, to refine monitoring and evaluation methodologies, or to explore the complementary relationships between CLS work and broader governance reform and poverty reduction goals.

12. The study encompasses four core areas of focus:

- A **mapping** of the present geographic outreach or footprint of CLS activities in Bangladesh. The mapping exercise will enhance understanding of the scope and scale of current CLS activities; determine the range of services that are presently offered by local CLS providers and delineate any substantive gaps; and identify parts of the country and/or vulnerable communities that are inadequately served by present service delivery mechanisms, or not reached at all.
- Documenting the various **models of ADR** that are presently being followed by legal service providers, assess the comparative efficiencies, inefficiencies, and possible inequities of the various models, and suggest strategies for replication of those that have proved particularly effective. To date, there has been relatively little study of the long-term impact of ADR in securing lasting settlements of specific issues or in enhancing the culture and broader community sanction of traditional ADR practices in Bangladesh.
- As a cross-cutting theme, determining key institutional and human resource, political-economic, financial, and other **constraints** to the present delivery and potential expansion or refinement CLS delivery; documenting the steps taken by successful local organizations to resolve them; and providing recommendations on future program strategies to reduce barriers and enhance the impact of new and existing services.
- Assessing the quality and integrity of **monitoring and evaluation tools and methodologies** that are presently being used by CLS providers and development partners, identifying good practices, and providing recommendations on strategies and empirical research tools that may be utilized to refine present services and link CLS activities with related governance reform and poverty reduction initiatives.

Study findings and recommendations are presented in the sections that follow.

B. MAPPING COMMUNITY LEGAL SERVICE DELIVERY

13. While it is understood that a substantial number of non-governmental organizations across Bangladesh conduct—or have at one time conducted—a combination of activities that can be described as community legal services, to date no effort has been taken to undertake a geographic mapping of the present scope and scale of CLS delivery. A principle objective of this study was to map the locations and types of legal services conducted nationwide, with the

aim of identifying gaps in geographic coverage and in the types of services available to different communities. The mapping methodology followed in this study included identification of the organizations that provide CLS in each geographic location, as the basis for informed strategies to scale-up services in a comprehensive and sustainable manner. CLS organizations range from large, multi-service NGOs such as BRAC, which has a presence nationwide, to small, local social service NGOs that serve one or several unions—the smallest local administrative unit in rural areas.

14. Some NGO service providers offer the full range of legal services described above, while others confine themselves to activities that aim to raise legal awareness but do not include any associated support services. These legal awareness activities often overlap with activities described as human rights awareness-raising—which in some cases introduce human rights concepts as well as relevant laws that protect or enforce them. Although human rights awareness work contributes to similar goals, the mapping exercise adopted a narrow definition of legal awareness training: *activities conducted in conjunction with (and often to stimulate latent demand for) legal services such as legal aid, ADR, and/or village court and arbitration council mechanisms.* Awareness activities with a human rights or legal rights component tend to be diverse. They may support service delivery programs, or alternatively be designed as stand-alone, one-time only activities. For purposes of the study, neither activities form part of a comprehensive set of services designed to prevent and/or resolve disputes and are not included in the mapping exercise.

B.1 Mapping Methodology

15. The mapping exercise attempted to delimit the geographic scope of CLS in Bangladesh, the national and local organizations that support or conduct CLS, and the major types of services provided. Since no prior mapping of such services was available, the study team collected data from both primary and secondary sources. These included:

16. **Mailed Survey Responses:** The team developed a two-page survey form that was sent by post to approximately 140 NGOs identified as providing legal services in a list provided by the Association of Development Agencies of Bangladesh (ADAB). The survey form invited respondent organizations to share information on the types of services that they provide, the geographic location of those services, and organizations with which they partner or collaborate in delivering them. While a number of the organizations on the ADAB list had either discontinued operations or relocated to an unknown address, the study team made a determined effort to establish contact every target respondent through follow-up telephone and other contacts. A total of 69 survey responses were submitted, which is a significant response rate for a mailed survey of this kind.

17. **Field Research Interviews:** In the field research phase of the study, 24 NGOs engaged in CLS were selected for site visits by two-person research teams. Most of these organizations were smaller, local organizations that have past or current affiliations with larger national or regional NGOs that have a demonstrated expertise in CLS. An extensive survey questionnaire and series of focus group discussions and individual interviews were administered at each NGO site on visits of four to five days duration.

18. **Interviews with Large NGOs:** The study team drew on the Foundation’s long history of support for CLS and the prior research experience of the senior national consultants in developing a target list of large national or regional NGOs that conduct CLS programs. While most of the target organizations focus exclusively on legal service work, a few are engaged primarily in social service delivery, with legal service activities undertaken as part of an integrated strategy. From each of these larger NGOs, the study team gathered information on the types and geographic locations of legal services administered by their own program staff or through partner NGOs that work under their supervision or with their technical support.

19. Information gathered from the three sources was synthesized in a database that linked specific development organizations and categories of legal service with specific geographic locations. In synthesizing the data, the study team relied heavily on an in-depth understanding of the operational processes through which different NGOs implement their legal service programs. Achieved through the course of extensive field research and interviews, this understanding equipped the study team to identify the nature of legal services delivered and the various working relationships among the different categories of NGOs that support CLS work. While an exhaustive data cleaning phase flagged certain inconsistencies, efforts to enhance the accuracy of the mapping of individual organizations and service types to geographic locations were complicated by the diverse nature of working relations among different categories of CLS organizations.

B.2 Limitations of the Mapping Exercise

20. The consolidated mapping data paints a composite image of the extent of integrated legal services programs conducted throughout Bangladesh and the local, regional, and national level organizations that deliver them. A few caveats should be borne in mind in assessing the mapping results.

21. **Awareness-raising Activities:** As noted previously, the mapping does not include all activities that fall within a broad description of legal services—particularly awareness raising activities that fall within the definition of human rights training. In addition, the mapping does not include legal awareness work that is conducted in isolation and not linked to ADR or legal aid services. According to this approach, the absence of an *integrated* legal services approach in a specific geographic area constitutes a gap in services for purposes of CLS expansion, even if freestanding legal awareness work is being undertaken in some form in the area.

22. **Project Duration:** Many CLS activities are dependent on international donor funding and, as such, are subject to the continuity of donor support. The mapping exercise does not attempt to take account of project end dates and the prospect of subsequent cessation of CLS in particular areas. With further research, information of this kind could be integrated to enhance the integrity of the CLS mapping as a planning tool, and assist in guiding donor harmonization in the CLS sector in the mid to long term.

23. **Organizational Overlap:** The working relationship between smaller local NGOs that deliver legal services in select geographic areas and larger, national-level, CLS-focused

organizations can have several dimensions. These include funding, training, monitoring, and/or beneficiary referral. Smaller NGOs tend to have linkages with more than one of the larger CLS-focused NGOs, but in some instances they were unable to provide the research team with sufficient details to determine which larger NGO supports their work in which geographic area, or to fully understand the nature of their working relationship. In some areas, the mapping may indicate an overlap in organizational coverage that is not fully consistent with the actual situation; however, the instance of false “overlaps” is limited to an estimated 5 to 10 percent of the sample in particular areas, and can be corrected through future research.

24. **BRAC:** The mapping does not include CLS delivered by BRAC. BRAC legal services are in fact extensive—provided through a unique national network of 541 area offices in 61 districts. They are not included for two primary reasons. First, legal service recipients are predominantly members of BRAC micro-credit and other programs. Although BRAC is prepared to extend services to non-members or prospective members, for practical purposes few non-members actually take advantage of BRAC legal services. Second, BRAC uses an NGO staff conducted form of mediation that, for reasons elaborated on below, has certain intrinsic limitations that make it a less-than-ideal candidate for an externally funded expansion of legal services.

B.3 Mapping Findings

25. Taking account of the above limitations, the mapping indicates that although CLS work is presently being undertaken in many parts of the country, substantial gaps in geographic coverage remain. The larger NGOs dedicated to legal service work play a central role, either employing their own staff to implement CLS, partnering with smaller NGOs to do this, or training non-partner NGOs in some aspect of their work. The mapping makes a distinction between CLS that is actively implemented or guided by these larger CLS NGO and CLS that is implemented in an independent manner. This distinction is important in developing recommendations for service expansion. As represented in the series of maps that follow, the mapping exercise indicates the following:

26. **Community legal services are available in an estimated 35 to 40 percent of Bangladesh:** Community legal services that include mediation and/or village court dispute settlement are offered through a variety of delivery mechanisms in up to approximately 40 percent of unions or wards (the smallest local administrative units). These mediation or village court services are accompanied by activities that aim to raise popular awareness of legal or human rights. As noted previously, areas in which awareness activities have been, or are being, conducted with no associated formal mediation, legal aid for formal court cases, or village court services are not included in this figure.

27. **Despite the expanding geographic footprint of CLS, certain parts of the country are not adequately served:** This includes the specialty needs of certain beneficiary populations that may require specifically designed and/or targeted program activities. For example, indigenous populations living in the Chittagong Hill Tracts and other hinterland areas have only recently begun to have access to CLS programs on a limited scale. Future program interventions in these areas must take account of unique challenges, but the turbulent history of the areas and the

experience of minority communities underline the importance of extending service to meet their needs. Other areas with limited exposure to community legal services include northern districts in the Chittagong division, and much of the northern Dhaka division, the central Rajshahi division and the Sylhet division. (A GIS mapping of CLS services is attached as Annex B.)

28. Large NGOs with a specialty focus on CLS guide activities in an estimated 33 percent of the country: Relatively few organizations offer CLS independently of some working relationship with the larger NGOs that have a specialty focus on CLS delivery.

29. Mediation and legal aid are by far the most common types of CLS: Coverage estimates by legal service type are as follows:

- ***ADR or mediation services (30 percent):*** This figure includes a range of ADR approaches that are described in detail in the section below.
- ***Formal court services (35 percent):*** This figure refers to legal counseling, financial aid, and other support services for clients who file or are named as parties to formal court cases. Services of this kind are typically offered in the same areas as ADR, as a successor to failed mediation efforts.
- ***Village court or arbitration council services (10 percent or less):*** The only village court services included in the mapping are those that are conducted with active outside training and support to ensure conformity with the 2006 *Village Court Act*. This figure does not include informal mediation sessions that involve the Union Parishad (UP) or Pourashava chair and/or one-time training programs for UP members—notwithstanding the fact that many local organizations and community members refer to these rudimentary activities as “village court” services.

30. No large CLS organization serves more than 10 percent of the country: While the larger specialty organizations enjoy outreach through working relations with small regional or community-based organizations, their independent services tend to have more limited geographic outreach—although coverage of close to 10 percent is by no means insignificant. Through their work with local partner organizations and provision of training and technical guidance and support, the large CLS NGOs have, to varying degrees, developed capacity and expertise to expand CLS to new areas, as well as systems to enhance the quality of service delivery. These organizations, and their primary areas of operation, are as follows:

- ***Ain O Shalish Kendro (ASK):*** ASK legal services, or legal services based on the ASK model, are delivered in approximately 10 percent of Bangladesh, primarily in northeastern districts and scattered areas in western districts bordering the Padma River.
- ***Banchte Shekha:*** While Banchte Shekha focuses on promoting the broader welfare of women, it conducts extensive CLS activities in 3 percent of the country—centered in Jessore and several other southwestern districts bordering India.
- ***Bangladesh National Women’s Lawyers Association (BNWLA):*** A multi-service organization that is dedicated to advancing the status of women, BNWLA’s community legal service work covers 10 percent of the country, in the west central districts and limited areas of the Dhaka, Khulna and Sylhet divisions.

- ***Madaripur Legal Aid Association (MLAA)***: The oldest CLS NGO in Bangladesh, MLAA delivers or guides services in 9 percent of Bangladesh, with most operations concentrated in the four districts south of Dhaka and limited areas in the northeastern, central and southwestern districts, and training activities conducted at the national level.
- ***Nagorik Uddyog (NU)***: NU offers CLS through its own network of field offices covering 1 percent of the country, with services in limited areas of the northeast, central and south central areas of the country.
- ***Rangpur Dinajpur Rural Service (RDRS)***: As the name of the organization suggests, RDRS legal services are centered in the northwestern districts of Rangpur and Dinajpur, covering 5 percent of the country.

31. It is important to note that there is no necessary relationship between the geographic percentage of the country covered by a particular organization and the quality of the CLS activities offered. While all of the organizations mentioned above have excellent track records and no attempt is made to rank the institutional performance and quality of services rendered, the relative quality of a program bears no relationship to its geographic outreach.

32. The ***Bangladesh Legal Aid and Services Trust (BLAST)*** occupies a different legal service niche than its fellow CLS organizations. Founded in 1993, with the support of The Asia Foundation and the Ford Foundation, BLAST works through upazila (sub-district) and district bar associations in offering legal counseling and legal aid to disadvantaged beneficiaries who file or are named as parties to formal court cases. While BLAST offers mediation services, its in-house ADR model is substantially different than those followed other CLS NGOs and legal aid remains its primary focus and core capacity. Its coverage is estimated at 18 to 24 percent of Bangladesh, although the true accessibility of its services to those in coverage areas included in the upper range of this estimate is difficult to determine with certainty.

B.4 Current State of Access to Justice and Key Constraints

33. The collective experience of NGOs involved in CLS and their individual client and broader community beneficiaries served as a primary source of many of the study team's findings on the current quality of justice for the poor and other marginalized populations, including ease of access and equitable enforcement of rights and obligations. Drawing on statistical data maintained by CLS NGOs and a combination of opinion surveys, focus group discussions, and individual interviews with beneficiaries administered by the study team (as detailed in the methodology summary included as Annex A), the team developed:

- A **profile** of the typical types of cases undertaken through the formal court system (legal aid) or ADR;
- An **assessment** of the impact of CLS on the poor, as perceived by beneficiaries of such services, including present challenges and areas of opportunity; and
- A supply-and-demand **ranking of the primary constraints or obstacles to justice** as perceived by NGOs and the poor themselves.

B.5 Present Landscape of CLS

34. More than three decades have passed since CLS activities were first introduced in Bangladesh by MLAA and other pioneering NGOs. Key features of the present CLS landscape identified through the access to justice study include:

35. *CLS Organizations*

- **A few large CLS organizations conduct a full range of services**, including community outreach, client service, training and technical support to smaller organizations, and higher-level advocacy activities, with an expanding geographic footprint. Examples include MLAA, BLAST, ASK, and BNWLA.
- **A large number of small to mid-size organizations undertake CLS programs as stand-alone initiatives** or, more typically, as an integral part of a broader social and economic development strategy. While a few organizations operate on a fully independent basis, the most successful members of this secondary tier of NGOs operate through a network relationship of some kind with one or more of the larger CLS organizations. These relationships may include periodic engagement for training or other technical support, or an ongoing relationship through which regular technical support or monetary resources pass from the larger organization to the network partner. The most successful mid-level organizations in turn operate through their own networks of smaller local NGOs or create their own community-based organization (CBO) partners. In some cases, the CBO operates strictly as medium for ADR or other CLS support at the grassroots level.
- **Most CLS organizations depend on donor support to conduct their program activities.** The most accomplished organizations typically introduced modest CLS programs with their own resources, and subsequently secured donor support for expanded activities on the strength of their proven track record. While some organizations have succeeded in maintaining some level of CLS activities after donor funding discontinues, the majority remain dependent on such funds. This resource dependence is consistent with the experience of counterpart organizations in the United Kingdom, Canada, and other developed nations, in which access to justice initiatives depend in large part on public funding or philanthropic contributions.
- **Organizational development and learning varies widely.** Some organizations have continuously increased their institutional and human resource capacity, geographic outreach, and sophistication of management and monitoring and evaluation systems and procedures over the years, while others have faced cycles of growth and retrenchment. In some cases, a larger donor has been prepared to step in as a smaller donor agency concludes a period of seed funding and incremental expansion of support. The Asia Foundation played an especially significant role in the launch and expansion of organizations such as MLAA and BLAST, providing support for a period of years then gradually scaling back its support while larger donors stepped in. Interestingly, the institutional experience and fortunes of CLS

organizations appear to have been less negatively affected by partisan political tensions and divisions of a kind that have recently affected the dynamic of civil society work in Bangladesh than the broader community of development NGOs.

- **Most CLS NGOs continue to focus on individual client services** involving the formal court system or ADR, while a few have advanced to focus on higher-level legal empowerment activities that aim to equip entire communities and interest groups to use the law to advance their collective interests.³

36. *CLS Coordination, Evaluation, and Learning*

- **CLS delivery is part of broader framework of justice sector reform and access to justice activities** that include the formal justice sector (including the courts, police and other law enforcement agencies, the criminal justice system, legislative development and lawmaking, and penal reform), as well as legal education and other components. Donor investments in the broader justice sector have reflected cycles of strategic emphasis. At certain times, the international community has placed particular emphasis on formal justice sector development through work with the courts and other public institutions, while at other times a perceived lack of political will on the part of justice sector officials and political leaders has driven the focus of donor investment to the informal justice sector and work with NGO partners. In the experience of the Foundation, an ideal strategy should include a combination of formal and informal justice sector interventions, including efforts to facilitate complementary linkages between the two. While this latter goal can be a challenge in Bangladesh, where relations between public institutions and civil society in the context of access to justice efforts have been marked by occasional tensions and lack of trust and cooperation, there is significant potential for productive working relations to advance common goals through public-private partnerships, improved coordination and information sharing, or other productive working relations.
- **An increasing number of donors have taken an interest in access to justice programming.** While this is generally a positive trend, the influx of donor funding has created competition among CLS organizations for available resources and a degree of duplication of effort. While communication and information sharing among donors has improved significantly, there is further scope for improved coordination, particularly in strategic planning and resource allocation, logical division of labor among donors and the organizations which they support, application of standardized monitoring and evaluation tools, and other harmonization efforts.
- **Busy CLS organizations have little opportunity for dialogue and information sharing.** The principals and program staff members of leading CLS organizations have few opportunities to meet and discuss common issues and experience. This represents a lost opportunity to rationalize certain elements of CLS delivery and to foster collective planning and sensible division of labor based on core institutional competencies or geographic outreach. Dialogue and information sharing opportunities are further constrained by

³ Activities of this kind are discussed in the recommendations section (E-7).

perceptions of political partisanship within civil society, personality conflicts, disagreements over advocacy objectives and strategies, and skepticism regarding the monetary or other benefits that are likely to result through improved networking and collaboration.

- **Considerable scope exists for specialty research on ADR systems and experience, higher-level legal empowerment initiatives, and monitoring and evaluation experience,** building on the emerging body of research and literature on, and thoughtful analysis of, CLS experience and shared goals and challenges.

B.6 Case Types and Proportions in CLS

37. Poor women are the primary beneficiaries of CLS programs, with the nature of disputes that they face reflected in the categories and relative proportion of cases initiated for mediation, the formal court system, and other forms of legal assistance. The study gathered case statistics from three different sources: (i) large NGOs that focus strictly on CLS; (ii) smaller, multi-service NGOs that deliver CLS locally (either as an exclusive focus of work or part of an integrated social and economic development approach); and (iii) focus group discussions and interviews with beneficiaries. Not all respondents classified the cases in which they were involved in a consistent manner, making a comparison across sources—or even across organizations in the case of smaller NGOs—somewhat challenging at times. Despite these factors, the same broad trends emerged consistently throughout.

- **Family related disputes are by far the most common case type, with women subject to physical violence, psychological intimidation, material deprivation, or a combination of problems.** The disputes faced by women beneficiaries involve polygamy, dowry, dower, maintenance payments, divorce, child custody, and domestic violence.
- **Land related disputes comprise a smaller portion of CLS cases, together with incidents of theft and disputes involving money.** The accuracy of current categorization schemes for land related disputes is an area of some debate. Disputes now counted as family disputes may in fact arise from conflict over land rights, but result in violence against women or inequities that compromise the rights of women. Just how prevalent these cases stemming from land conflict are among those counted as family disputes is unclear.⁴ Land dispute frequently arise among family members, particularly among in-laws or relatives that lay claim to land owned by female family members. Other land disputes arise among neighboring landholders or involve cases of encroachment, often resulting from inequitable power relations—including the pressures exerted by absentee landlords and the thugs that enforce their interests, who have the power to threaten and intimate poor neighbors. Theft and money disputes can involve family or non-family members.
- **Rape and other serious crimes of violence against women, such as acid throwing, represent a small fraction of total cases.** Although cases of this kind are not appropriate

⁴ This point was underlined in the consultative sessions in which this report was shared in draft for review and comment by local CLS specialists and representatives of donor agencies. The relationship between disputes characterized as family law disputes and those characterized as land disputes in an important topic of future study that is beyond the scope of the present study.

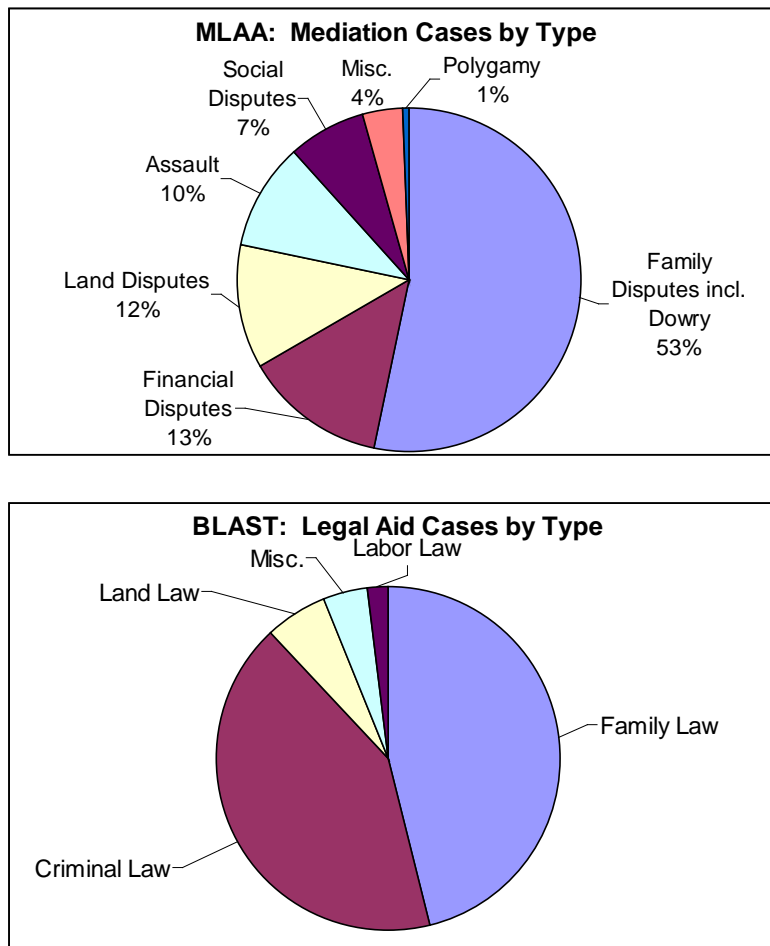
for ADR forums, but rather should be prosecuted through the formal criminal justice system, reports emerged of one or both parties to a dispute attempting to resolve these serious crimes of violence through mediation and/or monetary compensation.

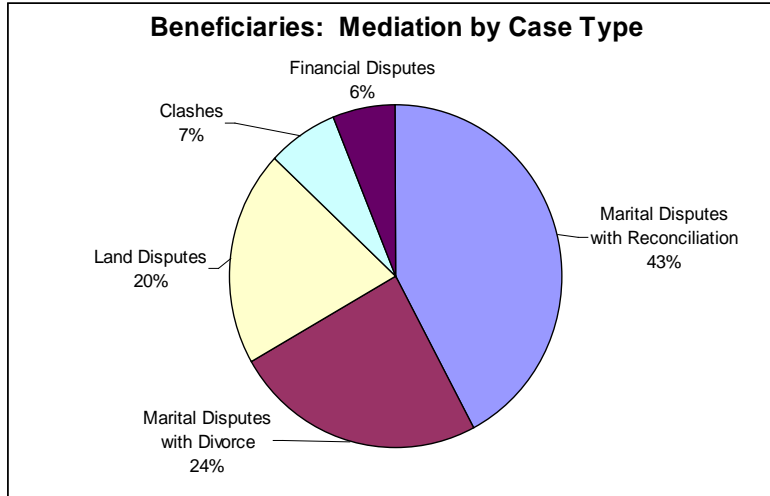
38. The charts (Figure 1) below present, as examples, the relative proportions of case types as documented by:

- the legal aid NGO BLAST;
- MLAA, a pioneer in mediation services; and
- combined beneficiary focus group and interview data gathered through the 24-site field research phase.

39. Although categorization varies and not all case sub-types are comparable, the broad trends noted above are consistent across a wide range of CLS providers and beneficiaries of CLS work.

Figure 1: Comparison of CLS Case Types and Proportions





B.7 Impact of CLS on the Poor, Women, and Other Marginalized Populations

40. The study team applied a variety of approaches to assess the impact of CLS on the poor, women, and other marginalized populations. The approaches ranged from focus group discussion and individual interviews, through review of records on compliance with mediation settlements (both of which are limited to CLS beneficiaries), to sample survey methodologies that were intended to measure changes in awareness, attitude, and broad behavioral trends in communities in which CLS is offered—positing a measurable auxiliary impact on all community members. With limited time and resources, the study team confined its focus to a narrower assessment of direct impact on CLS beneficiaries.

41. Extensive field research determined that NGO record keeping on long-term compliance with mediation settlements is strikingly limited. While many CLS NGOs conducted follow-up visits for up to six months after a settlement was reached, any settlement violations beyond this point were not systematically investigated and recorded. Explanations for the lack of long-term follow-up include reliance on the original complainant to register a fresh complaint (or on community members to detect instances of non-compliance and alert the CBO), and the difficulty of locating the original complainant—especially if they were members of the landless poor, who frequently relocate. The capacity of CLS organizations to undertake significant follow-up efforts are also affected by resource constraints. For example, if an organization receives funding for three years, there is little prospect of monitoring beyond the term of the project and expiry of funding. While initial settlement ratios are high, and a few settlements may involve one-time payment of compensation funds or other monetary assessment, in many cases the impact of settlements on the lives of the poor only becomes clear over a longer term—for example, if a husband continues to provide adequate funds for spousal maintenance or refrains from abusive behavior. In general, where the facilitating CLS organization maintains a presence in the working area, there is greater incentive for the parties to observe the agreed terms of dispute resolution in the long term.

42. Two impact questions were included in the guidelines for interviews with individual beneficiaries and focus group discussions with opinion leaders. The first attempted to gauge

perceptions of CLS impact on material poverty, while the second explored the impact of CLS on the treatment of the poor by government agencies and officials. When gauged in this way, perceived impact on the poor is high, but may not accurately reflect actual impact on material circumstances or government action.

- **96 percent of beneficiaries interviewed believe that CLS helps people to become less poor:** This strong opinion may reflect the fact that a large number of mediation settlements and cases (over 70 percent of the total for some organizations) involve money—including dowry, dower, maintenance or other family-related disputes with monetary implications, financial disputes with non-family members, or land disputes. A related question asked beneficiaries to assess the relative contributions of NGO development programs and CLS programs to poverty reduction. Respondents overwhelmingly indicated that CLS, or CLS in combination with development programs, helped people to become less poor—with only 3 percent indicating that development programs alone contributed to poverty reduction. While this perspective is difficult to reconcile with the tangible improvements in economic security that are known to result from competent NGO services, the immediate gratification and tangible benefits of recovering monies owed may partially explain the perspective of respondents.
- **88 percent of opinion leaders that participated in focus group discussions believe that CLS helps the government to become more responsive to the poor:** Most respondents suggested that CLS NGOs encourage government responsiveness by raising the awareness of both elected local representatives and citizens (36 percent), or by conducting trainings for elected local representatives (23 percent). A further 26 percent emphasized the influence that NGOs wield in the community, observing that CLS NGOs make government agencies and officials more responsive to the poor through complementary, competitive, and/or pressure roles. In fact, recognition of this combination role was acknowledged anecdotally in comments by local NGO officials and by beneficiaries themselves. For example, one respondent described NGO CLS work as a combined positive and negative force—that is, it encouraged greater respect for legal rights among UP members and local elites, while at the same time reminding them of the consequences of opposing an NGO that enjoys a strong a power base in the community. A small number of opinion leaders (12 percent) rejected the statement, insisting that NGOs do not help governments respond to the poor.

43. These striking perspectives on the role of CLS in making government agencies and officials more responsive to the poor reflect an important evolution of view on CLS delivery in Bangladesh, which holds potential for future DFID and other donor efforts to facilitate public-private partnerships in promoting improved access to justice. While some veteran CLS organizations such as MLAA have always emphasized the importance of collaborative working relations with government agencies and public officials, most CLS work involving public security or other government services has tended to operate within a narrow, client-focused framework that treats government counterparts as obstructions or impediments to justice. This view is gradually changing as CLS providers recognize the combination of resource, staff, and other constraints under which the police, administrative bodies, and other public agencies operate, and take steps to facilitate greater collaboration between civil society, community members, and public agencies and officials. For example, The Asia Foundation's support for

community-oriented policing programs undertaken by **Banchte Shekha**, **MLAA**, and **Light House** aims to facilitate collaboration between community leaders and police officials in advancing common interests in improved law and order and public security. In some cases, CLS NGOs go so far as to acknowledge that capacity or contacts among certain public institutions with which they collaborate actually complement gaps in civil society capacity. It is encouraging to find that CLS providers and beneficiaries have begun to thoughtfully reflect on relationships between CLS NGOs and counterpart government agencies and officials. Recent political changes and associated reform efforts may create further scope and opportunities for cooperative public-private working relationships of this kind.

B.8 Constraints on Access to Justice by the Poor

44. For purposes of the study, constraints or obstacles to access to justice refer to aspects of formal justice institutions or their functioning that prevent those who face legal disputes or encroachments on their legal rights from pursuing available recourse or from securing a just and equitable settlement. Some constraints keep the poor away from the courts or other forums of dispute resolution, while others prejudice the outcome.

45. **NGO Perspectives:** In each of the 24 CLS NGO sites visited by the field research team, NGO representatives were presented with a series of statements on constraints to justice, including inconvenience of travel distance, corruption and/or favoritism, gender bias, lack of legal knowledge, lack of sufficient resources to access the justice system, and lack of influence to ensure an equitable outcome. They were then asked to rank their disagreement or agreement on a five-point scale, with 1 representing *strong disagreement* and 5 representing *strong agreement*. The same set of questions was posed to representatives of the larger CLS NGOs studied. The results were aggregated across small and large organizations. Respondents were also given the opportunity to rank the top five constraints to justice in open-ended questions both before and after the series of statements were presented to capture any constraint factors that were not addressed in the list provided. An analysis of the results yielded a number of interesting findings. Perceived constraints to access justice by the poor can be grouped under three broad categories.

- **Access to the formal justice system (courts), including prohibitive cost, inconvenient travel distance, corruption, and gender bias** figured strongly in respondent perceptions of constraints.
 - Prohibitive costs include filing fees and related case fees, as well as bribes demanded by court clerical staff to expedite the processing of paperwork.
 - Distance refers to the location of both civil and criminal court in districts capitals, which involve travel time and transportation expenses, as well as forgone income, to reach.
 - Corruption encompasses personnel involved at all levels and steps of the judicial process, including police, court staff, and lawyers who misrepresent the required costs to parties and manipulate administrative procedures to delay cases. The large majority of respondents ranked police as the most corrupt public agency, followed

- closely by court staff.⁵ Corruption was characterized as occasional among lawyers and rare among judges.
- Gender bias permeates the judicial process, with police and lawyers ranking as the worst offenders. Judges were characterized as only slightly less prone to such bias. Notably, smaller local NGOs regarded gender bias as less of a problem than larger CLS NGOs did. This variation in view may stem in part from the differing staff composition of the two types of organizations, with the professional staff of larger NGOs more likely to include female professionals and support staff with higher education.
 - **Lack of awareness of legal rights and alternative mechanisms for dispute resolution** prevents many citizens—and women in particular—from seeking justice. Lack of legal knowledge was viewed as a major constraint for citizens, and conversely as an especially significant problem for government officials with whom CLS organizations interact—including local elected officials and upazila level officers of national government agencies in their various administrative and decision-making capacities. Officers of the larger CLS NGOs offered a wide range of informal estimates (based on impressions rather than research) of the percentage of citizens who are *unaware* of available CLS mechanisms. Among CLS NGOs that have operated programs in specific areas for a decade or more, estimates ranged from 10 percent to 40 percent. For those assessing geographic areas in which CLS programs have more recently been introduced, estimates of 70 percent to 80 percent were common. Of particular note, a recent sample survey undertaken by MLAA (which has defined a high *awareness* target of 60 percent and conducted extensive outreach for its four-year village court project) in year three of the project found that 71 percent of respondents in the project area were still unaware of its CLS activities.
 - **Interference by local politicians and wealthy elites, including threats of violence**, was rated as a major constraint to citizen access to justice by the smaller, local NGOs surveyed. More than 50 percent listed such interference as one of the top five constraints faced, with half the NGOs surveyed ranking it as the first or second most prominent constraint. Such interference takes place in the context of undue influence on *shalish* proceedings and threats against *shalish* complainants, witnesses, or panel members by *mastaans*.
 - **Threats of physical violence against complainants and witnesses, and social pressure from families concerned about their reputation** keep many women victims of legal rights violations from coming forward and filing complaints, and/or from pursuing a mediation process or court case through to settlement. This factor was not included in the pre-determined series of statements on constraints, but was spontaneously cited by half of the larger CLS NGOs interviewed.

46. The chart on the following page (Figure 2) shows the aggregated results of the constraint statement assessment, with responses disaggregated by small, local NGOs that offer a combination of integrated development services and larger CLS NGOs that focus more particularly on legal services. While larger NGOs tended to rate access to justice constraints

⁵ These results are consistent with those of several recent governance studies that invited respondents to comment on the quality and integrity of services rendered by various public institutions and officials.

more highly than their smaller counterparts, in one category a reverse scenario was observed. As noted above, local NGOs felt that political interference posed a significant constraint, while larger NGOs disagreed. Larger NGOs were markedly more concerned about gender bias and lack of financial resources as obstacles than were the smaller local NGOs with which they work. This may reflect the fact that larger organizations are generally better equipped to register and analyze constraints of this kind by virtue of their professional staff capacity and sophistication, particularly those involving gender bias.

47. **Beneficiary Perspectives:** The perspectives of beneficiaries aggregated from focus group discussions at the 24 field study sites present a similar picture of principal access to justice constraints, but with a slightly different emphasis. Beneficiary focus groups were asked about the constraints that poor persons face in their quest for justice. Figure 3 below shows the top five constraints identified by members of these focus groups.

Figure 2: NGO Perceptions of Access to Justice Constraints

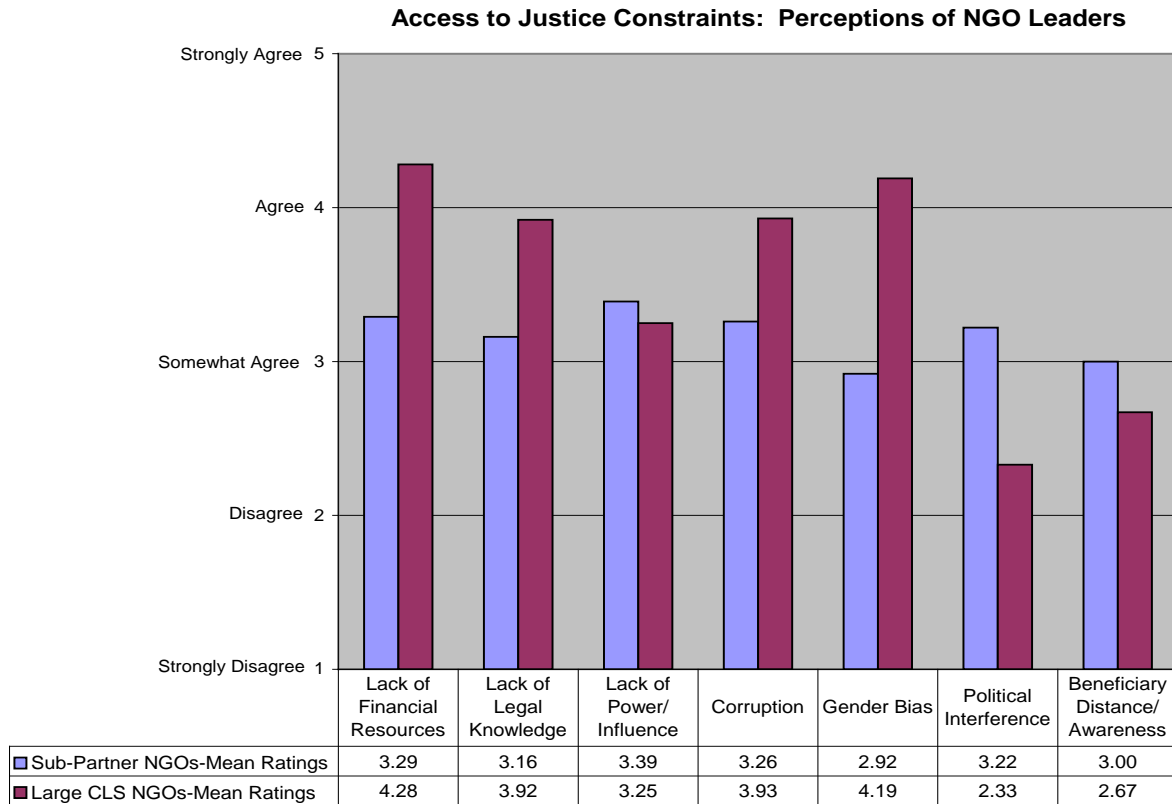
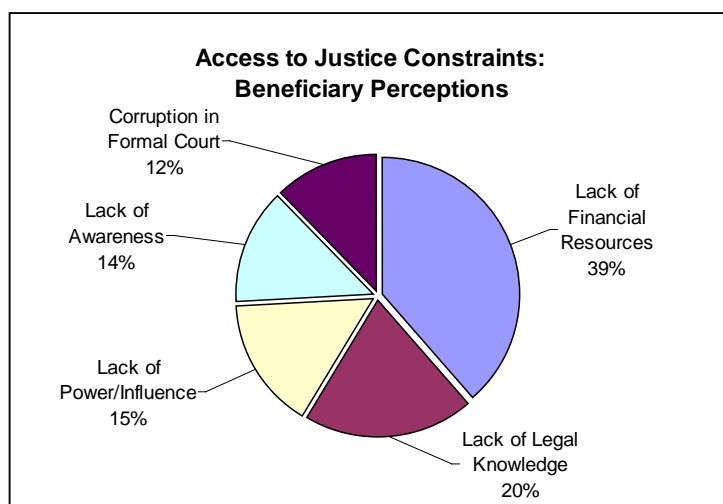


Figure 3: Beneficiary Perceptions of Access to Justice Constraints



48. A review of the top five constraints, as perceived by beneficiaries of community legal services, yielded the following key points:

- **Beneficiaries tend to place relatively greater emphasis on lack of financial resources as a constraint than do NGO service providers**, despite the fact that NGOs commonly provide travel money and cover court and lawyers’ fees as part of their legal aid services. A few beneficiary comments indicated that “justice” may be viewed by some as a “commodity” that is too expensive for the poor to purchase, particularly when demands for bribes are involved. When many of the cases pursued by disadvantaged persons involve demands for the payment of monies that have been wrongfully withheld, the expenses incurred to secure payment through the formal justice process may be regarded as an inevitable cost of recovering the monies due. While the wealthy can afford to procure justice at the premium rates commanded by the formal justice sector and conventional patronage channels, the poor cannot. Where justice is regarded as a commodity rather than a right, the poor may be less inclined to pursue it and more resigned to the view that legal rights and justice are privileges reserved for the wealthy and powerful in Bangladeshi society.
- **Beneficiaries place relatively more emphasis than NGOs do on a lack of awareness of available legal services.** CLS NGOs may be predisposed *not* to emphasize lack of awareness because they conduct extensive awareness raising programs designed to address this that they would be loathe to undermine; however, survey evaluations to assess “awareness” in percentage terms in areas in which NGOs operate are not common. Interestingly, in reply to a separate question that asked beneficiaries how they learned of CLS programs, only half of those interviewed indicated that the NGO itself was the source of information. This percentage figure that was nearly identical to the number of beneficiary respondents that named friends and relatives as the source of information on the existence of legal services in their communities.
- **Beneficiaries and NGOs both rate lack of legal knowledge, lack of influence by the poor, and corruption in the formal courts as major impediments to access to justice.** CLS

programs are designed to alleviate constraints among the poor and in their communities, but do not directly address formal court corruption. Collaborative civil society-public sector initiatives to address court corruption may hold potential to reduce this constraint in future. For example, BLAST and other NGO legal aid service providers could compile corruption profiles that record which rank of officials, or specific individuals, within the system requested the bribe, the amount of the bribe that they demanded, and the delays that resulted from non-payment. These can be aggregated and highlighted through a joint campaign to pressure particular courts to implement reform initiatives, and to take preventative actions in locations where a reform-minded judicial officer or senior police official can be identified and empowered to take action.

C. COMPARATIVE ASSESSMENT OF ADR MODELS

49. Alternative dispute resolution (ADR) encompasses a wide range of processes that are designed to settle disputes outside the formal court setting. In Bangladesh, examples span traditional to quasi-governmental ADR mechanisms. Although most of the larger CLS NGOs have gradually adopted ADR models that involve mediation sessions that are chaired or administered by panels of respected community members, nuanced variations exist among approaches that seem fairly similar on their face. For example, the legal awareness and training activities undertaken by different NGOs vary, as do the rules governing the composition and chairing of the panels and the degree of administrative assistance and legal guidance provided by the CLS NGO or the smaller partner NGOs through which larger organizations operate. Neither the instant study nor existing literature suggest that these variations in community ADR processes lead to widely varying outcomes, although each NGO can offer a sound rationale for the particular approach that it follows.

C.1 Models of Alternative Dispute Resolution

50. The several NGO models of ADR can be categorized more broadly in terms of *how* mediation sessions are conducted—whether by mediators who are employees of (or otherwise engaged by) a CLS NGO, or by citizen members of community-based organizations (CBOs).⁶ Although NGOs develop and facilitate CBO mediation panels in ways that vary from one organization to the next, variations among community panels are less important to their effectiveness and sustainability than the fact that they are not processes mediated by NGO employees. To these two categories can be added traditional *shalish* and village courts, the two other alternatives to formal courts that were most frequently observed in the course of the study.

51. When community ADR models in particular are examined as a group and compared with other ADR approaches, more substantive differences emerge. This study groups them as follows:

⁶ Community-based organizations or CBOs are local groups of community members active in community concerns. Members of these groups are volunteers and may engage in one or many types of activism or social service. For the purposes of this study, CBOs refer to those volunteer groups (formed with the assistance of NGO staff) that pursue community legal service activities, typically conducting mediation panels and raising legal awareness at the ward or sub-union level.

- Traditional *shalish* or mediation, and NGO monitoring of traditional *shalish*
- NGO organized community mediation
- NGO employee mediated ADR
- Village Courts⁷

52. The following discussion focused on each broad model, with particular attention to the NGOs that practice them.

C.2 Traditional Shalish and NGO Monitoring of Shalish

53. **Traditional Shalish:** *Shalish* is the longest established form of community-based dispute resolution in Bangladesh. The parties to a legal dispute and their family members are summoned to assemble in the presence of a panel of village elders and interested observers to discuss the problem and reach a conclusion. The *shalish* panel may include Union Parishad chairpersons and members, as well as religious leaders or other community leaders of influence. In recent years, religious leaders are less likely to participate in traditional *shalish*. Local elites with political party affiliations are increasingly active in *shalish* panels, which may reflect a shift in the power balance in rural society to those whose political connections allows them to deliver results or services. A *shalish* is not necessarily completed in one day. It may extend over a number of public sessions, and may include private negotiations between disputants that typically involve other family members. The conflicts typically involve family matters, land issues between neighbors, insults or other incidents that dishonor a party to the dispute, or petty theft. In some cases, serious criminal cases, including rape or other crimes of violence against women that should be prosecuted through the formal court system, are referred to *shalish*.⁸

54. Despite the calm and quiet deliberation implied by the notion of mediation, *shalish* sessions are frequently held in crowded village commons or meeting places, with disputants, their relatives, *shalishdars* (members of the panel that hears the dispute), and onlookers offering their views and observations in a cacophony of inputs. It is not unusual for 100 persons to observe a *shalish* session. Where the dispute involves a woman party, she may be confined to the home or distant vantage point and represented by her father, brother, or other male relative. Whether the conduct of a particular *shalish* session is best characterized as mediation, arbitration, or a fusion of the two hinges on the nature of the particular dispute and the parties involved. Community mores and the opinions of powerful leaders often exert such a strong influence that outcomes are literally imposed on a disputant in a court-like manner that may be contrary to his or her wishes.

55. *Shalish* is often the first and only option available to poor and marginalized citizens that lack the resources and social and administrative connections to pursue more equitable dispute resolution mechanisms. It is affordable, comprehensible, convenient, and efficient, even in

⁷ It is understood that a combination of factors distinguish the village court mechanism from other community-based dispute resolution mechanisms; however, for purposes of analysis the village court is included in this set of categories.

⁸ This phenomenon is by no means unique to Bangladesh, but is observed in many countries where inefficiencies in the formal justice sector or cultural norms influence decisions on the institutional venue or dispute resolution mechanisms to which crimes of violence are referred. In the worst case situations, no action of any kind is taken.

contrast with a well-functioning judicial system, with a participatory dimension that confers a degree of social sanction to decisions reached by the *shalish* panel.

56. *Punitive Shalish*: An initial area of concern and inquiry for this study related to reports of harshly punitive versions of traditional *shalish*. These reports received international attention from Amnesty International⁹ in the 1990s and have since been the subject of periodic local media attention over the years. The reports relate numerous incidents of people being lashed, or even stoned to death, for violation of local norms with regard to moral conduct. In circumstances of this kind, *shalish* can go far beyond mediation or even arbitration and take the form of a compulsory, *de facto* trial. These trials may result in *fatwas* decreed by Muslim religious leaders who serve as members of *shalish* panels or otherwise influence them. These religious leaders interpret or misinterpret shari’ah law in subjecting the “defendants” to severe punishment.

57. Fortunately, the field research indicates that such punitive *shalish* processes are relatively rare in Bangladesh. Only a few NGOs consulted in the study had even heard of such abuses taking place anywhere close to their areas of operation. Even then, their responses to questions about the practice suggest that the few dozen newspaper reports of the abuses may represent the sum total of the problem rather than a window on a problem that is more prevalent than reports would suggest. This is also the opinion of ASK, which tracks violations of this kind. Local and national NGOs are sometimes able to mobilize police to prevent such actions before they occur.

58. **NGO Monitoring of Shalish (ASK; formerly Banchte Shekha, BLAST—GKNHRIB Project)**: NGO monitoring of *shalish* concentrates on strengthening citizen capacity to join, pressure, persuade, educate, and otherwise influence traditional *shalish* panels. The monitoring dimension of this approach equips community members who are trained and supported by the NGO to influence the proceedings of existing *shalish* panels. A number of NGOs monitor traditional *shalish* panels while at the same time seeking to co-opt the panels or to establish parallel structures. ASK follows this approach in its CLS work outside Dhaka. **Banchte Shekha** took this approach in the late 1980s, but abandoned it after judging from its experience that it failed to adequately secure equitable justice for women. Through a network of partner NGOs, ASK and BLAST train and support a number of community-based organizations to exert influence on traditional *shalish*, as well as on other local institutions and administrative procedures. Through work with local partner NGOs, ASK and BLAST form CBOs that act in a watchdog capacity, monitoring the community, propagating human rights awareness, intervening in the case of human rights violations, and promoting the role and capacity of women mediators. Interventions may involve bringing the issue to the attention of a traditional *shalish* in which CBO members serve as observers and/or participants. ASK’s strategy focuses on transforming local mores and unequal power structures over the long term.

C.3 NGO Organized Community Mediation (MLAA, Nagorik Uddyog, Banchte Shekha, BNWLA, RDRS)

59. The most common form of NGO interaction with *shalish* involves the organization of *shalish* panels and sessions by a CLS organization, in some instances building on other rights-

⁹ Amnesty International, *Bangladesh: Taking the law in their own hands: the village salish*, AI Index: ASA December 13, 1993.

oriented or development-oriented activities undertaken in the community. This approach derives in large part from the pioneering efforts of MLAA dating back a quarter century, including training other NGOs on the MLAA methodology. Within this broad category, the nature and degree of NGO engagement with *shalish* vary significantly.

60. Some organizations, including **MLAA** and **Nagorik Uddyog (NU)**, include some traditional shalishdars as members of the alternative panels that they convene, in order to maintain the presence of influential persons and the credibility that they lend to the proceedings. This traditional panel membership is supplemented by the appointment of teachers and other non-traditional educated persons, women, and men with modest educational and economic backgrounds. Once they convene a *shalish*, NGO personnel generally assume passive roles in the session, with the mediation managed by the shalishdars. Despite these common features, there are distinct differences between MLAA and Nagorik Uddyog. MLAA operates through an extensive network of program and administrative staff members that serves a district and adjacent areas with a population of more than one million, and maintains close working relations with the local bar. NU actively organizes its partner populations to support the ADR sessions that it facilitates and the legal aid assistance that it offers when necessary.

61. In contrast with these two CLS providers, **Banchte Shekha** (and to a lesser extent **BNWLA**) typically assumes an even more active role. Its *shalish* panels include a larger number of non-traditional shalishdars drawn from its partner populations, with a particular emphasis on women panelists. Its personnel generally play more active roles that involve suggesting or even directing *shalish* deliberations. Banchte Shekha is able to do this because it is a social development organization whose dispute resolution work builds on years of associated efforts to empower women through education, public health support, livelihood development, and other initiatives. It should be noted that there is some debate regarding the merits of approaches that bypass traditional elites. Some organizations that previously operated independently of local elites have subsequently revised their strategies to facilitate tactical linkages with elites, and to forge working relationships between elites and non-elites. This is based on the understanding the elites continue to command a degree of influence and respect that can be drawn on to good effect where steps are taken to engage with them and to establish a common understanding.

62. **Rangpur Dinajpur Rural Service (RDRS)**, a large, regional, multi-service NGO, trains community organizations to conduct *shalish*, as well as to serve as principal conduits for its micro-credit, health, and other services. These union-level “federations” also refer clients to legal aid services at RDRS field offices. ASK assists RDRS in training and monitoring federation CLS activities. The CLS activities undertaken by RDRS are combined with livelihood development initiatives and support services. There appears to be significant potential in this area, with BLAST and certain other CLS organizations exploring the complementarity between CLS activities and livelihood development initiatives.

63. While there is no typical model for NGO-organized community *shalish*, this approach is the most widespread among CLS providers. Nagorik Uddyog, which as a matter of policy does not work through partner NGOs but implements CLS with its own staff, provides a representative example of this model. NU starts with a series of participatory local workshops through which it identifies members of traditional *shalish* that are open to a more just form of

dispute resolution. It invites them, along with other community members, to become part of new NU *shalish* panels that are one-third women. A particular effort is made to include female UP members. NU's seeks to transform rather than replace existing power structures. Extensive training on human and legal rights is given, including role plays and other participatory exercises. NU assists by organizing *shalish* hearings through its volunteer community organizers, one in each union it serves. NU staff members assist with logistics but play a passive role in the actual mediation session which, though incorporating consideration of the laws involved, emphasizes the willingness of both parties to reach a settlement through compromise. If no settlement can be reached, or the opposing party does not abide by the settlement, NU provides legal aid to initiate a formal court case.

64. It is important to understand the factors that motivate an otherwise reluctant party to participate in a *shalish* and to honor an agreement. While they may vary from NGO-to-NGO, community-to-community, and even case-to-case, at least three factors contribute:

- For the same reasons as traditional *shalish*, the presence of influential persons in the *shalish* panels may combine with evolving community mores to create **pressure** for both parties to reach and honor an agreement;
- The **credibility and influence of the NGO** itself can bring weight to bear on the parties to participate in the process and to observe the results of the mediation;
- The **threat or fear of being taken to court** by lawyers associated with the CLS provider can provide a powerful incentive for a recalcitrant party to cooperate. Despite the fact that the courts are overwhelmed with case backlogs, prone to corruption, and in other ways challenged, the expense of litigation and the uncertainty of the result can persuade a party to submit to ADR and thereby avoid becoming enmeshed in the formal justice system.

65. While Banchte Shekha tends to regard the first two factors as more influential than the third, a number of NGOs and observers consulted regard the threat of litigation—and thus, this linkage of non-state and state justice systems—as being centrally important.

C.4 NGO Employee Mediator (ASK Dhaka Office, BLAST, BRAC)

66. A few NGOs utilize individual staff members to mediate conflicts between disputants, without the involvement of *shalish* panels. This mediation—often also called *shalish*—can take a number of forms. For some CLS providers, it represents the initial intake by a field or office worker before it explores the other options of NGO-facilitated *shalish* or litigation. For others, it is the main mechanism by which the NGO seeks to help resolve a dispute, though it retains the option of utilizing either its own staff or outside counsel to pursue legal redress. Both BLAST and BRAC use this form of mediation to settle disputes before pursuing legal action in court. Both differ organizationally from the other CLS NGOs identified. BLAST is dedicated to providing legal aid services in 19 unit offices operating under the guidance of the local bar association, while BRAC, one of the foremost development NGOs in Bangladesh, offers legal services within an existing social service delivery infrastructure. MLAA also uses employee

mediation on a limited basis, predominantly in urban settings where the busy lives of residents have made it difficult to form the community-based mediation panels that it normally employs.

67. Trained in the MLAA mediation approach as adapted for an office setting, **BLAST** staff members are required to attempt mediation of a dispute in the first instance, with the exception of cases of serious crime, such as rape. Notwithstanding this procedural requirement, case actions dominate the BLAST workload. Since BLAST's founding in 1993, it has mediated over 6,912 disputes and filed over 25,812 court cases. Since most BLAST unit offices are located in district capitals, travel time and lost income could become a burden for some parties and their families that are asked to attend mediation sessions in BLAST offices. To avoid this burden, travel costs are paid by BLAST. It also maintains "non-unit" offices in upazila capitals, whose staff are not trained in mediation and therefore move disputes directly to court.

68. With its network of legal aid clinics operating in 541 area offices in 61 districts, **BRAC** can offer mediation services close to its clients, who are predominantly beneficiaries of the organization's broader micro-credit and other social services. BRAC has a close working relationship with ASK. From 1998 to 2002, ASK provided training in legal services and legal awareness work to BRAC staff. Since this time, ASK staff have served in the role of monitors and mentors, visiting BRAC area offices on a periodic basis to assist in resolving more difficult issues and support trained paralegals in conducting mediations. BRAC paralegals spend approximately half of their time providing mediation services and the other half of their time supporting legal awareness and empowerment activities that are facilitated by literate BRAC members that have received intensive training in community education. **ASK** employees also conduct mediations in-house, but only in the organization's Dhaka headquarters. ASK mediators receive some of the most sophisticated training noted in this study. Many are lawyers and all are trained in mediation and psycho-social analysis techniques. They are accustomed to conducting multiple mediations until a settlement is reached or a decision to file a formal court case is reached.

C.5 Village Courts (MLAA)

69. While markedly different in modality and legal status from the mechanisms discussed in the previous sections, the quasi-governmental village court process is also a form of alternative dispute resolution. It combines local government or UP representatives and community members on panels that deliver legally binding judgments. Village court is often used as shorthand to refer to two institutions that were first enabled under the 1976 *Village Court Act*, which was updated as the 2006 *Village Court Act*. The village court is a five-member panel headed by the UP Chair. The parties to a dispute may select two members each for the panel—one of whom must be a UP member, while the other can be selected from the community at large. This body can hold hearings on both petty criminal offenses and civil cases involving sums less than Tk. 25,000. Disputants represent themselves and no lawyers are allowed to participate. A second three-member panel known as an arbitration council is empowered to hear disputes arising under Muslim family law, which primarily involve maintenance payments, polygamy, and divorce. The UP Chair also heads this panel and disputants may each select a person to represent them.

70. Since 2004, **MLAA** has conducted an intensive village court activation effort that involves placing trained village court assistants at the union level to conduct legal awareness activities and trainings, complete all required paperwork, and otherwise ensure that the village court process is implemented in accordance with the enabling laws and ordinances. While **MLAA** is not the only NGO to work with village courts, its approach is substantially more labor intensive and thorough than those followed by other organizations. Other NGOs such as **ASK** and **BNWLA** train UP and community members in village court or arbitration council procedures and work to raise awareness of village court services in their communities, but these are one-time activation efforts and not examples of an on-going and closely monitored support process of the kind administered by **MLAA**. Other smaller NGOs claim to work with village courts, but in reality the term is often used as a blanket reference for any informal mediation or arbitration activities in which the UP chair presides, which is not uncommon. The experiences of **MLAA**, **ASK**, and others have yielded a number of concerns about the functioning of these bodies. Since the UP chairperson plays a pivotal role, his or her frequent absences, or suspected tendency towards bias—or in some cases, corruption—can slow the process or prejudice the verdict. Although more accessible than formal courts in terms of reasonable distance, modest cost, and relative simplicity, village courts are somewhat removed from the populace and centered on formalized power by comparison to community-based mediation panels.

71. For more than two decades a debate has raged on the value of donor investment in strengthening the village court process. Supporters point to the sustainability value of placing dispute resolution capacity in the longest and best established unit of local governance in Bangladesh, while detractors underline the risk of village court proceedings being subject to political bias, conflict, and/or corruption. Recent research on the **MLAA** experience suggests that village court decisions are substantially based on consensus, with minimal evidence of corruption, gender bias, or political bias. The research suggests that political factors are more likely to affect the implementation of decisions rather than the decisions themselves. The study team welcomes the work of **MLAA** to date and the program activities to be undertaken by the European Commission as sensible approaches to explore the viability and sustainability of efforts to strengthen the village court mechanism, and to advance the role of experienced CLS NGOs in supporting local government efforts and capacity development in the justice sector.

C.6 Assessment Criteria

72. The broad range of ADR approaches offers alternatives to the resolution of disputes through the formal courts—the latter course representing a largely impractical option for the poor and other marginalized populations in the Bangladesh context. To evaluate the various ADR approaches, the study team designed a set of assessment criteria that are based on the need to develop recommendations for an effective, sustainable, scalable, and efficiently harmonized investment strategy for community legal service delivery. A discussion of each of these criteria follows.

73. **Beneficiary Access:** While prohibitive costs and impractical travel distances are most pronounced as constraints to justice through the formal courts, these same obstacles arise to varying degrees when ADR approaches are broadly examined. Distance—or more precisely, *proximity*—is important not only because of the time and expense involved in reaching the ADR

venue, but also because, for some beneficiaries, the closer the mediation venue is to their home community the less intimidating it is. This factor increases the likelihood that they will seek assistance and submit to the terms of agreement reached.

74. **Process Justice:** The quality and integrity of justice rendered by ADR can be compromised by susceptibility to the influences that arise where different sets of rules and different types of individuals are involved in conducting various ADR procedures. The following factors emerged as potentially negative influences on the ADR process. They reflect the views and experience shared by respondents in the field research interviews, and the study team's understanding of the different rules that govern—and the dynamics that affect—ADR sessions and the participants involved:

- The tendency of ADR sessions to assume a dynamic of arbitration rather than mediation, forcing the terms of settlement on either or both parties, and increasing the likelihood that terms will be viewed as unjust or inequitable, or not honored in the long term.
- A lack of adherence to legal norms or other practical considerations, with more traditional or conservative values taking precedence over the law or common sense solutions. Many CLS NGOs are explicit in interjecting legal norms into the ADR process to replace traditional ones that work to the disadvantage of women and the poor. In this context, mediations tend to be bounded and do not operate under the classic model in which good faith and compromise are considered sufficient to achieve an acceptable outcome. At the same time, some research findings suggest that NGOs tend to compromise on issues concerning the amount of dower to be paid to the wife. In most cases, the amount is settled by mutual compromise based on ability to pay rather than the amount originally specified in the marriage contract.
- Political biases or interests that taint the conduct and/or judgment of mediators.
- Gender biases that compromise the interests of female parties.

75. **Settlement Enforcement:** If a settlement is not honored, the steps followed to ensure the compliance or obligations assumed by the parties can take a variety of forms. Broadly speaking, these fall into two major categories: *social pressure* and *legal sanction*. While some ADR approaches are better designed than others to harness community opinion and to exert a weight of authority sufficient to compel the long-term observance of a settlement, others can more easily resort to legal means, including requests for police involvement. ADR approaches that involve members of the community in which the parties reside on mediation panels, and that have earned a reputation as trusted community institutions, can more readily cultivate social pressure or community sanction to ensure that a settlement reached is complied with. Other ADR mechanisms, such as village courts and certain NGO ADR processes, involve the community to a far lesser degree, but have easier access to enforcement measures based in law, including court orders and police action.

76. **Social Change Impact:** ADR processes can and do have an impact on the culture of the communities in which they operate. As discussed in the recommendations section, the potential for various ADR approaches to replace and/or improve upon traditional *shalish* panels, and thus to be sustainable in the long term, depends in large part on their acceptance by the community. Certain ADR approaches are better positioned to effect social change at the local level, and these same changes in values will make it more likely that community members will continue to

conduct ADR on their own, accept ADR settlements, and/or enforce compliance with these settlements after donor-funded NGO assistance has ended. For purposes of this assessment, ADR approaches are ranked according to the likelihood of: (i) female participation on mediation panels; (ii) the prospect of wider community participation on the panels; and (iii) their potential for instilling human rights values or to secure gradual changes in traditional societal norms and value more broadly. Rules governing the formation and ongoing composition of the mediation panel form the basis for assessing the first two factors. The final factor is more general, with the assessment based on a consideration of the weight that traditional power relationships play in the session, as opposed to mediation principles based in law.

C.7 Comparative Assessment

77. The matrix below (Figure 4) presents an assessment of the four broad ADR approaches using the four criteria described above. The poor, fair, and good rankings assigned are based on qualitative interview data and an understanding of the workings of each ADR process. Each ranking was assigned a numerical equivalent, with 1 being good and 3 being poor. The values for each broad criterion were determined by averaging the scores for each model.

Figure 4: A Comparative Assessment of ADR Approaches

| <i>Dimension</i> | <i>Traditional Shalish</i> | <i>CBO Mediation</i> | <i>NGO Mediator</i> | <i>Village Court</i> |
|----------------------------------|----------------------------|----------------------|---------------------|----------------------|
| Beneficiary Access | | | | |
| Cost to Clients | Good | Good | Good | Fair |
| Distance from Clients | Good | Good | Fair | Good |
| Beneficiary Access Ranking | 1 | 1 | 1.5 | 1.5 |
| Process Justice | | | | |
| Mediation, not Arbitration | Fair | Good | Fair | Poor |
| Consistent with Law | Poor | Fair | Fair | Good |
| Potential Political Bias | Fair | Good | Good | Poor |
| Potential Gender Bias | Poor | Fair | Good | Fair |
| Process Justice Ranking | 2.5 | 1.5 | 1.5 | 2.25 |
| Enforcement of Settlement | | | | |
| Community Social Pressure | Good | Good | Fair | Fair |
| Access to Legal Sanction | Poor | Fair | Fair | Good |
| Enforcement Ranking | 2 | 1.5 | 2 | 1.5 |
| Social Change Impact | | | | |
| Female Representation | Poor | Good | Fair | Fair |
| Community Participation | Fair | Good | Fair | Fair |
| Instills Human Rights Culture | Poor | Good | Fair | Fair |
| Social Change Ranking | 2.66 | 1.0 | 2.0 | 2.0 |

C.8 Advantages of the CBO Mediation Model

78. The CBO mediation model scores well on all four assessment criteria. It provides good beneficiary access, process justice, means to enforce settlements, and, of particular importance, impact on social change. By contrast, other approaches have more significant drawbacks:

- The **traditional *shalish*** process is based on the established hierarchy of the community, and tends to reinforce prevailing norms in the dispute resolution process and enforcement mechanisms.
- **Village courts**, though ostensibly based in law, may be subject to several process justice issues, many of which arise because of the dominant position of the UP chairperson in determining the verdict of the court. At the same time, research on the MLAA experience suggests that a variety of factors figure in the final decision and that the final resolution reflects a degree of consensus, which in turn reflects the dominant values of the local community.
- **NGO employee-conducted mediations** can be quite positive in terms of access and process, but may lack the enforcement and social change advantages of a mediation process that is embedded in and conducted by the community, with a strong degree of local ownership. In some instances, research suggests that the local profile and authority of an NGO may carry certain gravitas in influencing the positive results of a case. Some have argued that the status and influence of NGOs can actually help to expedite an otherwise slower process of social change.

79. This assessment also favors mediated over arbitrated settlements because of the greater acceptability of the former to disputants. While parties to a mediation (women in particular) can be pressured to accept settlements based on the same traditional norms that may guide an arbitrated settlement, there is greater opportunity to question, resist, or refine the application of such norms in a mediated process.

D. MONITORING AND EVALUATION OF CLS

80. Sound monitoring and evaluation systems serve multiple purposes in the design, implementation, and refinement of CLS programs that aim to promote improved citizen access to justice. They meet the requirements of donor agencies in ensuring that their substantial investments are achieving desired results, are responsive to unforeseen issues or opportunities that emerge, and complement the work of other donors. They strengthen the capacity and program impact of CLS organizations by ensuring that adequate records are maintained and analyzed and that M&E findings inform strategic planning decisions. Monitoring and evaluation tools are especially effective when they are jointly designed, implemented, and periodically reviewed and refined through the collaborative efforts of donors and CLS organizations.

D.1 General Findings

81. Several key findings emerged from the access to justice study, which are discussed in greater detail in the sections that follow:

- M&E systems vary in complexity, ease of application, and substantive value, but are almost universally applied to some degree by CLS organizations.

- Donor requirements rank highly among the factors that motivate CLS organizations to introduce M&E systems. In general, donor-prescribed systems tend to be more sophisticated, but are likely to place greater time and human resource demands on CLS organizations.
- Among smaller, community-based CLS organizations, M&E tools tend to be quite basic and primarily involve the quantification of basic services and outputs.
- Larger and better established CLS organizations such as MLAA, BLAST, and ASK tend to have the greatest capacity to design and implement sophisticated M&E systems, particularly where methodologies are developed in close collaboration with donor partners or are supported by donor-funded technical assistance and/or coordinated periodic review and refinement initiatives.
- While CLS organizations increasingly recognize the importance of linking access to justice programs with governance reform and poverty reduction, the study team found no examples of M&E techniques that explore this relationship to its full potential.¹⁰ There is an opportunity to design and test purposive methodologies that probe these largely unexplored relationships.
- There is an urgent need for greater attention to and investment in M&E systems, methodologies, and human resource capacity—particularly in the development of systems, structures, and information-sharing mechanisms that will minimize the administrative burden placed on implementing organizations and donors, and introduce a greater degree of cross-project, cross-donor standardization of key output and impact measurements. At the same time, M&E methodologies should move from conventional counting-of-output practices to more sophisticated bases of inquiry that explore the relationship between improved access to justice, enhanced governance standards, and poverty reduction

D.2 Monitoring and Evaluation Approaches

82. **General:** There are arguably as many different approaches to measuring the impact of CLS programs as there are different types of CLS activities and interventions. M&E tools span a scale of complexity that ranges from:

- simple estimation of target beneficiaries reached through basic legal awareness raising initiatives; through
- more detailed record-keeping on clients served by legal aid and/or of cases resolved through alternative dispute resolution; to
- the application of more sophisticated analytical tools that probe the relationship between enhanced citizen access to justice through legal support services and economic advancement, more effective citizen participation in governance, and other improvements in the quality of life and experience of individual clients and broader beneficiary populations.

¹⁰ This finding is consistent with the findings of the Bangladesh component of The Asia Foundation's current ADB-funded project on *Legal Empowerment for Women and Disadvantaged Groups*, which included country situation analyses that sought examples of good M&E practices.

83. The challenge of developing sound M&E systems, tools, and practices has become even more complex as the Government of Bangladesh, civil society organizations, and donor agencies place increasing emphasis on the Millennium Development Goals, implementation and monitoring of the national poverty reduction strategy, and the adoption of pro-poor growth concepts as central themes of their respective development strategies.

84. **Conventional to Complex Measurement:** The monitoring, evaluation, and assessment of CLS activities by implementing NGOs and, more recently, by the Government of Bangladesh under its nascent national legal aid program, are for the most part *conventional*—in the sense that M&E activities are rooted in the quantified assessment of initiatives carried out under given projects. In the majority of cases, the M&E systems and procedures followed include basic counting of activities and outputs (for example, the number of trainings, workshops, and meetings organized); the number of disputes on specific issues mediated; the number of courts cases filed and pursued to settlement or verdict; and related data. Some CLS organizations also conduct periodic follow-up activities on a limited scale—such as monitoring of compliance with negotiated settlements or court verdicts.

85. While it is fairly simple to collect and maintain data on basic client services and their outcomes, more sophisticated measurements present a greater challenge. For example, it is difficult to assess on a routine basis the advancement of collective strength and solidarity among members of beneficiary communities, increased confidence and self esteem among women beneficiaries or minority populations, or advances in the role and treatment of women in community justice and decision-making. Impact of this kind typically reflects intangible processes that are difficult to measure—particularly in the short term. At the same time, efforts should ideally be taken to measure certain *secondary* changes that occur as a result of CLS interventions in the context of family and/or community practices and experience. For example, changing patterns or practices in the payment of dower and maintenance, decline in the instance of arbitrary divorce, reduction in domestic violence, collective bargaining for fair wages, and participation by marginalized citizens in the affairs of local government bodies may reflect changes in traditional community or political structures that affect power relations, opportunities, resource allocations, and the quality of governance in local communities.

86. Monitoring and evaluation of CLS activities with the aim of informing strategic program planning is no simple task. It requires thoughtfully devised tools and strategies, adequate investments, skilled and motivated personnel, and excellent communication and cooperation between local implementing organizations and donor partners. While CLS organizations are investing greater time, energy, and resources in this effort, busy schedules and competing demands on their time provide few opportunities for them to share M&E experience and learn from one another, while donors in turn have few opportunities to coordinate and share experience and lessons learned. As harmonization efforts command increasing attention and secure greater commitment on the part of donor agencies, future program strategies should clearly aim to facilitate more regular dialogue and information sharing among CLS implementing agencies and their donor partners.

D.3 Implementation of M&E Systems

87. **Motivating Factors:** A variety of factors influence the M&E strategies of different CLS organizations—including donor expectations or directives and the value that individual organizations place on sound M&E systems and procedures. The professional program staff members of CLS organizations tend to be extremely busy and to devote most of their limited time to program implementation and hands-on client services. There is a tendency among busy CLS providers to view their work as an unequivocal good in advancing citizen rights and access to justice. Consequently, they may be little disposed to invest energy in M&E activities that distract them from their primary focus. For CLS organizations that depend on a limited professional staff base to implement complex, time sensitive programs, donor monitoring requirements can impose substantial time and human resource demands that involve certain trade-offs that they may be reluctant to make.

88. **NGO Perspectives on Donor Reporting Requirements:** Three primary points emerged from discussions with the CLS organizations studied:

- *First*, many CLS NGOs expressed genuine **frustration** with the fact that M&E reporting is the exclusive or primary basis of interaction with donor partners. Some organizations emphasized that their program activities, the challenges that they face in implementing them, and the steps taken to address issues and constraints would be best observed and understood by donors through face-to-face interaction and more frequent project site visits rather than simply being conveyed in writing through periodic reporting. While effective M&E methodologies are capable of capturing substantial detail and nuance, there is no substitute for hands-on contact with program activities. At the same time, it is recognized that donor agencies face increasing pressure to administer large and complex programs with a reduced human resource base.
- *Second*, CLS NGOs indicated that the **workload** generated by reporting to multiple donors on the basis of overlapping M&E systems is frequently under-estimated and under-appreciated by their donor partners. For example, one large and experienced organization explained that when major reports are due much of its other work either substantially slows or literally grinds to a halt while data is collected, analyzed, and reported.
- *Third*, CLS organizations reported that the complex and comprehensive nature of some donor M&E systems require so much documentation and generate such a **volume of information** that it becomes difficult for responsible program staff to thoroughly comprehend the prescribed procedures and the vast content of the data—difficult, in essence, to see the forest from the trees. Some professional NGO staff members observed that the workings of complex M&E systems may only be clear to the outside specialists that are engaged to provide periodic technical support, with no comparable understanding and capacity established among the core staff of the CLS organizations. Some went as far as to suggest that complex M&E system fail to equip CLS NGOs to understand whether their programs are ultimately succeeding or failing in the view of their donors. In many instances, information is collected and passed to the donors, with little scope for follow-up discussion and analysis.

After a report is filed, weeks or months can pass before the donor follows-up with the NGO partner.

89. Notwithstanding these concerns, CLS organizations appreciate the necessity of M&E requirements. They appreciate that basic record keeping is essential for implementing organizations and donors to ensure the appropriate and accountable use of funds and/or to make a compelling case for increased investment and scaling-up of program activities. Established baseline data, indicators, and target results and outcomes help to keep the work of CLS organizations on track and provide benchmarks for monitoring progress over time. It is further understood that M&E methodologies are in many instances prescribed by the organization-wide requirements of a given donor, rather than being conceived and developed by local representatives of the donor agency.

D.4 Current NGO Approaches to Monitoring and Evaluation

90. **Basic Approaches:** Small development service organizations whose work includes less sophisticated CLS operations comprised the majority of organizations studied through the combination of project site visits and mail-in survey submissions. Among modest organizations of this kind, existing M&E systems yield basic quantitative data on CLS activities, but relatively little qualitative insight on or analysis of the broader impact of program activities. Among these basic practices observed, there is significant scope for improvement and a readiness on the part of CLS organizations to explore ways to enhance their M&E systems and capacity. For example, in some cases the records of disputes maintained by small CLS organizations were found to be strictly quantitative in nature, with no effort taken to determine whether *shalish* agreements were actually being accepted and observed over time by the parties to the dispute. In other cases, CLS organizations reported that they had systems in place to follow-up with at least a sample of disputants, but lacked adequate records to document follow-up initiatives undertaken in good faith. In one instance, however, it was not clear whether the collaboration between a smaller focal NGO and two larger CLS organizations actually led to an increase in the quantity—or an enhancement of the quality—of client work by the smaller NGO, or whether the latter was actually reporting information on the same cases to the respective larger organizations.

91. This is not to suggest that the smaller and less sophisticated CLS providers lack a reasonable understanding of at least some aspects of their program impact. Simple or less than optimally efficient M&E systems and procedures rarely reflect a lack of commitment or resolve on the part of modest CLS providers. Most CLS organizations collect some form of basic quantitative data and make simple qualitative inquiries into the well being of community members that they have assisted. Several organizations shared details on the systems of meetings and discussions (some formal and regularly scheduled, others informal in nature) that they convene to gather information on the effectiveness of CLS and other activities in beneficiary communities.

92. For example, **CODEC** maintains records of newspaper clippings that document its facilitation of milestone cases and settlements or otherwise report on its activities. **MUKTI** routinely checks the status of *shalish* agreements by talking to neighbors rather than the disputants themselves, based on the proven understanding that neighbors may be better

positioned to comment objectively and candidly on the status of cases and the circumstances of disputants. Other organizations document simple case studies of select incidents or disputes. In several cases in which community-based CLS providers work in collaboration with, and receive funding or technical support from, larger partner NGOs, they adapt the more sophisticated record-keeping systems of their larger partners to good effect. For example, **ISDE** draws on technical support and guidance received from **MLAA** in tracking and maintaining records of village court and *shalish* cases.

93. Smaller and less sophisticated CLS organizations frequently lack the necessary training and resources to follow-up on disputes in a systematic way, or to do more than simply forward basic quantitative reports to donors or the larger NGO partners with which they cooperate. While the basic M&E systems and procedures followed by smaller CLS providers are adequate for generating quantitative reports on the number and nature of disputes that they handle, they typically lack deeper bases of inquiry and analysis. Moreover, the basic systems and procedures followed offer little scope for follow-up to ascertain whether agreements are honored.

94. **More Sophisticated Approaches:** Several CLS organizations have begun to place greater emphasis on the quality and sophistication of the M&E tools that they use to measure and assess the results of their work. For example, some organizations have invested in empirical baseline studies that serve as a basis for monitoring impact over time, and/or help to identify and refine program activities that target the needs and interests of identified beneficiary populations. In some cases, CLS providers have independently recognized the value of enhanced M&E tools for their work, while in others the international donor agencies that support their work have insisted that more sophisticated tools be developed to facilitate monitoring and reporting against jointly agreed target results and outcomes. Although CLS practitioners sometimes complain that more demanding monitoring and reporting functions detract from their core work, the value of investment in M&E is increasingly recognized and insisted on.

95. All of the larger CLS providers studied track activities. To varying degrees, their achieved outputs are compared to original baseline and desired target values. The **Bangladesh National Women Lawyers' Association (BNWLA)** has an extensive array of some 40 indicators for its training division alone. It tracks activities such as *shalish* mediations, orientation courses conducted for BRAC staff, dialogue meetings with imams and local elected officials, provision of legal literacy classes, and case studies. Its legal division tracks complaints registered, cases filed, monitored and completed, and numerous other activities. BNWLA developed its indicator array independently, modifying this slightly after consultations with its many donors. **Banchte Shekha** tracks a limited range of indicators against baseline and target values. In response to a donor request, a modified logical framework is utilized. Each indicator is linked to a Poverty Reduction Strategy Paper (PRSP) goal, while explanations are documented for progress or setbacks in achieving targets, and risks and mitigating factors identified. **Nagorik Uddyog** is in the process of modifying its M&E system at the request of its Board of Directors and has engaged an international advisor from the Philippines to support this effort. Current reporting formats reflect a tiered system with progress towards objectives measured by qualitative outcomes, objectively verifiable indicators (OVIs), activities, and outputs. These are tracked against baseline values and reported on a quarterly basis.

96. The study identified some striking examples of good practice among larger and more sophisticated CLS organizations:

97. **Ain O Shalish Kendra (ASK)**, which has fostered a mediation approach centered on community activism, developed its monitoring and evaluation systems in collaboration with donors. Indicators track male and female membership in the different union-based CBOs with which it works, the *shalish* mediation cases that they conduct, and various initiatives taken to prevent human rights violations. While the number of quantitative indicators is limited (for example, case type statistics for CBO mediations are not reflected), ASK's intent to foster CBOs that can function with a minimum of external support is reflected in its qualitative assessments of the growing confidence and sense of ownership that CBO members have in the mediation process and their ability to prevent or respond to human rights abuses. Notably, ASK also reports steps taken to expand awareness of M&E concepts among its local partners by holding study circles on baseline surveys and logical framework analysis.

98. The multi-faceted record-keeping system utilized by the **Madaripur Legal Aid Association** reliably keeps track of the thousands of disputes addressed through mediation or the formal court system that MLAA handles each year, as well as the training programs that MLAA offers for ordinary citizens, elected local representatives, upazila and other government officials, and NGO personnel. MLAA began to systematize its M&E systems in 1991, more than a decade after it came into existence, and launched a dedicated M&E unit in 1997. With a current staff of six specialists, the unit utilizes a combination of quantitative indicators and qualitative observation to track and monitor cases, training, and other activities, supported by structured checklists. MLAA also conducts post-training assessments, based on samples of two to five percent of trainees that are conducted several months following a training program to measure knowledge retention and find practical examples of how trainees are applying the knowledge and experience acquired. With the assistance of an experienced Bangladeshi consultant, the MLAA training unit recently completed a review and revamping of its operations, drawing on in-country and international experience and proven practices.

99. While the established M&E system of the **Bangladesh Legal Aid and Services Trust** is not representative of best practice, its emerging approach has benefited greatly from the DFID-supported consultancy that assisted BLAST and two other Bangladeshi NGOs in revising their monitoring systems and log-frames).¹¹ Unlike the other CLS NGOs above, BLAST focuses on court cases (though its employees are trained to attempt to mediate disputes in its offices in the first instance, where possible). It keeps statistics on case types, monies recovered on behalf those it represents, and participation by garment workers and others in the legal rights training conducted through BLAST's several urban legal clinics. BLAST also tracks the source of complaints received, only 30 percent of which are registered through direct application to BLAST offices. Referrals from lawyers, NGOs, and former clients are the source of most of the remaining complaints. Beyond this, BLAST has historically not recorded geographic and socio-economic information on case clients or tracked defendant compliance with court verdicts.

¹¹ Mary Ann Brocklesby and Sheena Crawford, "Revised Monitoring Systems and Logical Frameworks for BLAST, Nijera Kori and Transparency International, Bangladesh: Final Report," June 2006.

100. While BLAST has recently hired a new director for its M&E unit, it believes additional training support will be needed before it can fully transition from a past approach that monitored activity counts to a more sophisticated system aimed at monitoring impact. The DFID-supported consultancy recommends a log-frame with new cross-cutting strategic outputs. That is, the work of two or more BLAST divisions contributes to achieving a single strategic output. This approach is designed to encourage cross-divisional thinking, and to suggest areas for improved linkages among divisions that have previously been operating more or less independently of one another. The new system also includes a greater and welcome emphasis on case data to assist BLAST in determining its true geographic outreach, which the study team was compelled to estimate as part of its mapping exercise.

D.5 Measuring Enhanced Governance and Poverty Reduction

101. While the M&E tools applied by specialty and social development organizations that conduct CLS work have become more sophisticated in recent years, the progress made in assessing the impact of CLS on the economic circumstances and governance experience of beneficiary populations has not kept pace with more basic assessment techniques. The data generated and performance benchmarks established by even the most sophisticated M&E systems provide little insight on the impact of CLS activities in reducing poverty or improving the standards of governance experienced by individual clients and broader beneficiary populations. Connections of this kind are especially difficult to draw at the community level, which is by definition the focus of most CLS interventions.

102. This situation reflects a variety of factors. CLS organizations have tended to approach their work with certain goals and expectations in mind. These typically focus on individual issues and needs, with only limited attention to the broader legal, administrative, and governance constraints that affect the disadvantaged populations that they serve. The organizations are mindful of the connections, but have not developed sophisticated M&E strategies to examine and document them. Moreover, the professional staff members of CLS organizations tend to have little formal training, and limited time to invest, in the design of research instruments and methodologies that probe the relationship between CLS and higher-level impacts.

103. As a result, while the M&E tools used to assess the impact of CLS activities have become more sophisticated, connections with poverty reduction, governance reform, and other national development efforts continue to be somewhat cursorily drawn—with results typically fortuitous rather than achieved by design. Service providers and development partners have only recently begun to reflect on linkages to higher-level governance reforms, citizen participation, and the empowerment of entire communities beyond individual client service results.

104. The development of assessment tools to establish sound connections between CLS interventions and improvements in the economic circumstances and quality of life of disadvantaged populations poses serious challenges of methodological design, empirical rigor, and patience. While legal service providers generally accept it as a matter of faith that CLS activities help to resolve the legal problems faced by beneficiaries—and, in so doing, to improve their quality of life through improved economic circumstances and other yardstick measures—it is difficult to actually prove this point on the basis of robust empirical evidence.

105. A seven-country study on *Legal Empowerment for Supporting Governance* that The Asia Foundation conducted on behalf of the Asian Development Bank in 2001 included supplementary research studies in Bangladesh and the Philippines.¹² The aim of the supplementary research was to pursue specific qualitative and quantitative evidence of the impact of legal empowerment. In analyzing the impact of the CLS work of three local NGOs on citizen knowledge, governance, and poverty in Bangladesh and the role of high-level CLS activities in advancing agrarian reform in the Philippines, both studies found some evidence that CLS contributes to good governance and poverty reduction.

106. The supplementary study on the impact of legal empowerment on selected aspects of knowledge, poverty and governance in Bangladesh considered the work of three local CLS NGOs. It found significant positive impact on poverty, governance, gender equity, and legal knowledge. Beneficiary and control populations were surveyed for Banchte Shekha (which provides mediation and other legal services to its member-beneficiaries as part of an integrated development strategy that also includes livelihood, credit, health, education, and gender-oriented work), Samata (which specializes in land rights advocacy, but whose integrated development strategy also includes legal services, education, livelihood development and facilitating member-beneficiary access to government agricultural services), and MLAA. Despite slightly higher levels of education and affluence in the control populations, all of the “intervention” (NGO beneficiary) samples scored higher in four critical areas: general knowledge of law; engagement and confidence in citizen advocacy; positive perceptions of gender equity and the role of women in governance; and confidence in the value of law and good governance.

107. The more specific impact of the NGOs’ legal empowerment work included poverty-alleviating improvements in the well-being of NGO member/beneficiary populations, as demonstrated by Banchte Shekha’s (and to a lesser extent Samata’s) effectiveness in restraining the widespread but illegal practice of *dowry*. The NGOs in general, and Samata in particular, also appeared to contribute to use by the poor of government-managed lands that otherwise are frequently subject to seizure by local elites. In a finding that holds potential implications for poverty reduction, the NGO sample populations reported dramatically less reliance than control groups on such elites for legal assistance, particularly in the case of MLAA beneficiaries, who take advantage of alternative avenues for relief.

Since poverty reduction involves not just material circumstances, but also participation by the poor in decisions that shape their lives, the integrated development strategies of Banchte Shekha and Samata proved significant in an additional regard. Survey results indicated that they effectively foster positive community attitudes concerning women’s right to seek legal redress and participation in governance. In addition, citizen participation in joint actions was far higher for the two NGOs’ beneficiaries than their control groups. Of perhaps greater significance, nearly all of their intervention sample respondents reporting such participation characterize it as completely or partially successful. The two NGOs’ sample groups also indicate greater success than the two control groups in influencing the decisions of elected local representatives.¹³

¹² See The Asia Foundation (Stephen Golub and Kim McQuay), *Legal Empowerment: Advancing Good Governance and Poverty Reduction*, in Asian Development Bank, *Law and Policy Reform at the Asian Development Bank*, 2001 Edition, pp. 7-164

¹³ The Philippines supplementary research focused on the work of the NGO consortium Paralegal Education Skills Advancement and Networking Technology (PESANTEch). PESANTEch helps to strengthen the capacities of CBO-

E. RECOMMENDATIONS

108. This section presents a set of program planning recommendations for a comprehensive national strategy to promote improved citizen access to justice through the refinement and expansion of community legal service programs conducted by non-governmental organizations in Bangladesh. The recommendations are intended to contribute to the program planning considerations of all donor agencies that support the CLS activities of local NGO partners and share a common commitment to improved coordination and harmonization of program strategies and investments. They are organized under seven themes and sub-themes, with strategic program recommendations linked to the key findings, issues, and opportunities identified earlier in the report and summarized under each theme.

| | |
|-------------------------|--|
| <u>Recommendation 1</u> | Expand community legal service delivery through a coordinated national strategy to incrementally establish CLS facilities and CBO mediation panels in every union of the country |
| <u>Recommendation 2</u> | Strengthen CLS through innovations in program quality, institutional capacity, and service outreach |
| <u>Recommendation 3</u> | Enhance interaction between the formal and informal justice systems through legal aid support and referral mechanisms, pilot village court programs, and community-oriented policing |
| <u>Recommendation 4</u> | Promote CLS sustainability |
| <u>Recommendation 5</u> | Strengthen CLS monitoring and evaluation capacity |
| <u>Recommendation 6</u> | Facilitate enhanced communication, coordination, and collaboration among CLS organizations and donors |

linked farmer-paralegals who work on agrarian reform and other land tenure issues and promote increased public participation in local governance. While PESANTEch attorneys may appear in court where necessary, most legal representation is provided by the 50 or more farmer-paralegals who help prepare applications and represent their fellow CBO members in proceedings of Department of Agrarian Reform (DAR) adjudication boards. The study reviewed three types of data: interviews with local DAR officials who independently assessed which barangays were most and least successful in implementing agrarian reform; survey research in four barangays, consisting of two that have PESANTEch legal empowerment activities (the “intervention” areas) and two demographically similar areas that do not (the “control” areas); and focus group discussions in these four barangays. All three analyses strongly indicate more positive outcomes in the communities where legal empowerment work has been pursued. The DAR officials rated the success of agrarian reform efforts significantly more favorably in the intervention barangays, as opposed to the controls. The survey research findings indicated that in the intervention areas land is much more likely to have been acquired through agrarian reform. The results also revealed higher productivity in the intervention areas, along with higher and more disposable income, greater farm investment, and better housing quality (as indicated by galvanized iron versus grass roofs). Focus group participants from the intervention barangays were more specific in identifying land rights violations committed in the hypothetical case that they were invited to comment on, citing relevant laws and the specific government agencies that could best respond to the situation. In addition, they better articulated the procedural steps to be taken to resolve the problem. In the control groups, participants tended to favor seeking outside help rather than taking independent initiative in resolving problems. They frequently suggested that assistance be sought from a list of government agencies, with little understanding of what specific support these agencies could provide.

Recommendation 7 Support legal empowerment strategies that link CLS with broader sectoral development initiatives

RECOMMENDATION 1:

Expand community legal service delivery through a coordinated strategy to incrementally establish CLS facilities and CBO mediation panels in every union of the country

Key Findings, Issues, and Opportunities

109. *CLS programs promote improved access to justice:* As the principal service delivery medium of the informal justice sector and a bridge between the formal and informal sectors, NGO-administered CLS programs play an important role in promoting greater citizen access to justice in Bangladesh. While the informal sector can never wholly substitute for the formal justice sector, there is a strong and mutually reinforcing connection between the two systems—as well as untapped potential for greater public-private synergy through legal aid, village courts, community-oriented policing, and other program activities that link civil society capacity with the needs and corollary capacity of formal justice sector institutions. The practical benefits of CLS include time and cost efficiency, comparative ease of access for beneficiaries, and a significant transformative effect on the societal norms and values of the broader communities served by CLS that extend well beyond individual client beneficiaries and individual case outcomes. This latter effect reflects the combination of community engagement, education, consensus, and sanction that results when informal CLS mechanisms engage large numbers of community members who observe justice being done—which represents a significant value-added benefit of CLS. CLS services also promote a degree of healthy competition and institutional pluralism, by presenting access to justice alternatives among which local beneficiaries may chose.

110. *Links between large CLS provider NGOs and community-based organizations greatly enhance CLS delivery:* Network relationships that link large, national-level CLS NGOs like MLAA, mid-sized intermediary organizations, and small, community-based organizations at the grassroots have played an important role in the expansion, outreach, and substantive quality of CLS programs. The growth and refinement of these collaborative networks in the last decade is one of the single most important innovations in NGO-based legal service delivery in Bangladesh. Through their network structures, specialty CLS organizations like ASK, BLAST, and MLAA play a leadership role in establishing model approaches, conducting training programs, undertaking research, facilitating working relationships between network members, and securing and administering donor funding.¹⁴ Mid-sized organizations that work at the sub-national level in turn serve as intermediaries between the large specialized CLS providers and CBOs at the

¹⁴ The role of established CLS providers was enhanced in the mid-1990s through resources provided by The Asia Foundation and USAID under the Bangladesh Democracy Partnership. Banchte Shekha, MLAA, and Palli Shishu Foundation of Bangladesh received funding to share their CLS experience (with a particular focus on ADR techniques) with smaller NGOs around the country. While funding for the training initiative was provided for only three years, important working relations and proof-of-concept models were established that continue to advance CLS delivery today. Some beneficiary NGOs continue to provide CLS support on a self-sustaining basis, while others have maintained and enhanced their working relations with Banchte Shekha, MLAA, and Palli Shishu Foundation.

grassroots. Some of these intermediary organizations are directly funded by donor agencies, while others receive donor funding via national-level NGOs. Extending the network reach to the grassroots, CBOs administer ADR and other CLS services in small communities around the country. Some are established for the exclusive purpose of facilitating community dispute resolution, while others facilitate CLS as a complement to broader community development activities.

111. ***The CBO mediation model of alternative dispute resolution provides the greatest combination of benefits:*** The CBO model provides excellent beneficiary access, means of enforcing settlements, and transformative social change impact. It also nurtures sustainable capacity, local ownership of and investment in CLS activities at the community level, and the potential to provide CLS support as part of an integrated community development strategy that can serve as the basis for higher-order legal empowerment interventions of the kind proposed under Recommendation 7. In cases where CBO mediation yields an ‘unjust’ outcome or where complainants voice strong concerns over privacy, the supporting intermediary NGO can retain the option of offering employee-mediated, office-based sessions on an exception basis.

Program Recommendations

112. ***Support an expanded national CLS network:*** A coordinated national network of CLS activities should include the same range of services provided by existing legal service organizations, combining basic legal awareness raising, paralegal counseling, alternative dispute resolution, legal aid referral and client representation in formal court cases where appropriate, and select legal advocacy initiatives. A sequenced expansion would build on proven network mechanisms, with large CLS organizations serving in a lead role, mid-sized organizations operating in an intermediary capacity, and community-based organizations providing hands-on legal support services at the grass roots, with a particular focus on ADR. Larger CLS organizations would work through the intermediary NGOs to establish, train, and monitor CBO mediation panels in areas that lack comprehensive ADR services.

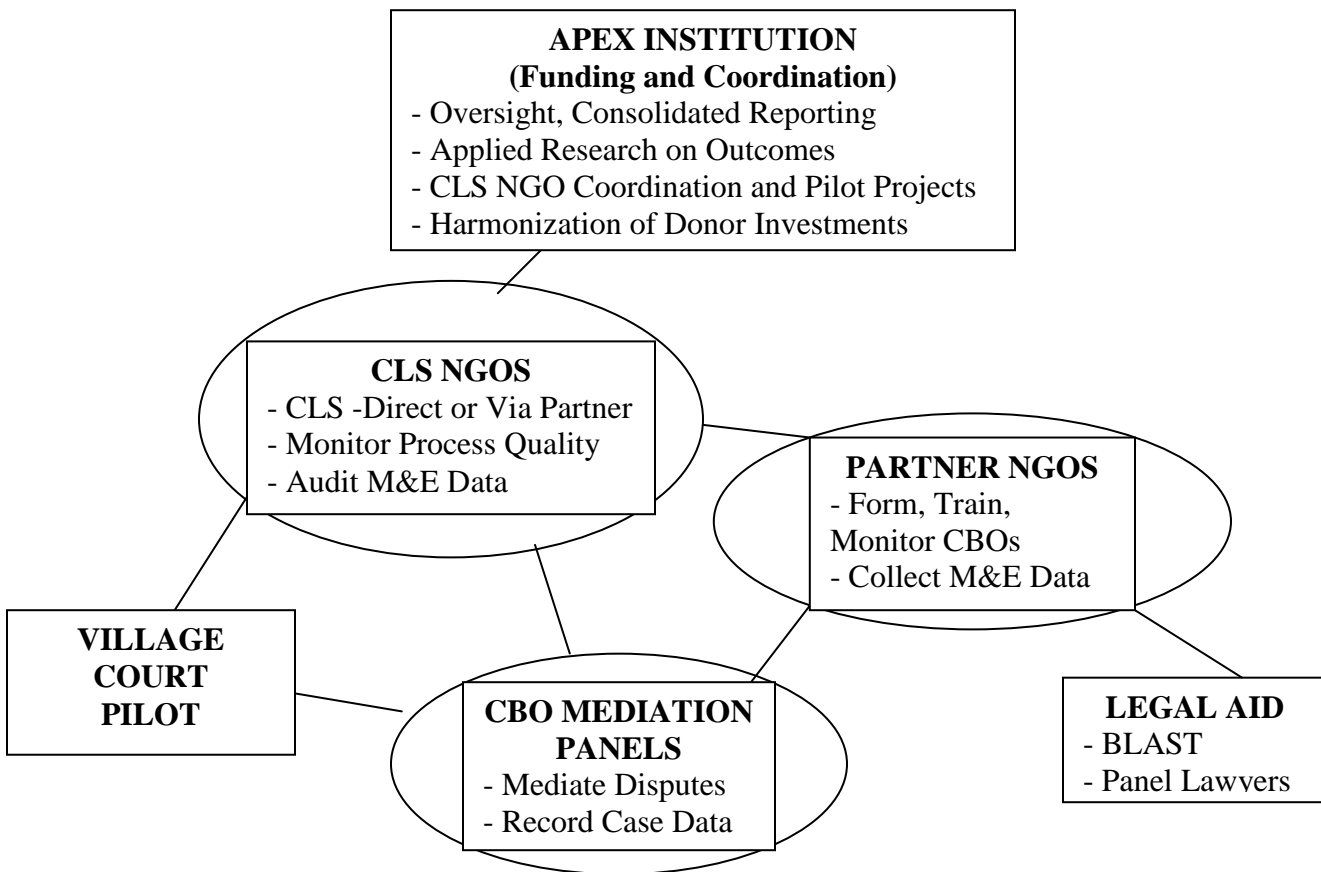
113. ***Selecting intermediary NGOs to support CBO mediation:*** The CBO mediation model has evolved as the approach of choice for CLS organizations that have expanded their services, with no particular variation of the model proving superior to others. The larger CLS NGOs have adopted one of two means to expand on the basis of this model—either *directly* using their own staff to establish, train, and monitor the CBO mediation panels; or *indirectly* (and arguably more efficiently) through intermediary NGO partners that operate in specific geographic areas. Selecting good intermediary NGOs is important for CBO mediation success. These NGOs are typically local, multi-service organizations, the best qualified of which bring a combination of experience and contacts and enjoy strong institutional goodwill in their areas of geographic focus.

114. ***Balancing standardized approaches with individual NGO autonomy:*** The proposed strategy would strike an optimal balance between the standardization of CLS program approaches, training materials and methodologies, and monitoring and evaluation protocols and preservation of the independent institutional identities and program approaches of implementing organizations. This arrangement leaves CLS organizations free to plan and conduct programs in

accordance with their own institutional style, but with stronger communication and support channels and more productive donor-level coordination.

115. **Three-tiered program delivery structure:** It is proposed that the expansion strategy be implemented through the multi-tiered program delivery structure illustrated in Figure 5. The proposed structure would create a national framework through which DFID and other donor agencies could expand CLS services in close coordination. The approach would address the challenges noted in the findings section, as well as accommodate the combination of supplementary CLS strengthening mechanisms outlined under Recommendation 2 (strengthen CLS through innovations in program quality, institutional capacity, and service outreach) below. This delivery structure would ideally be administered by an experienced apex funding and coordinating institution (or combination of institutions) that would work in close coordination with DFID and other donors and the network of local CLS partner organizations through which the national strategy will be implemented.

116. **Figure 5: CLS Expansion Structure**



- *Apex funding and coordinating institution:* An experienced funding and coordinating institution (or combination of institutions sharing responsibility) would serve at the apex of the expansion structure. The apex institution(s) would serve a variety of roles. During the

program inception phase, it would work with donor partners and CLS organizations in refining the program strategy; develop a logical framework and other program initiating documents; enter into letters of agreement with participating CLS NGOs, administer grants and technical assistance, and monitor program and financial compliance; explore prospects for the harmonization of financial management and program reporting functions; and develop applied M&E and supplementary research strategies to ensure rigorous evaluation of general program outcomes, as well as higher-level assessment of the impact of CLS program activities on improved governance and poverty reduction.

The apex institution(s) would also assist participating national-level CLS NGOs to link with the intermediary partner NGOs and with BLAST offices to support legal aid referrals, and design select pilot village court, community-oriented policing, and other projects that aim to facilitate improved interaction between the formal and informal justice systems. With additional refinements, the apex institution could also build on the rudimentary CLS mapping database created for this study to fulfill a harmonization role that would enhance donor coordination and help to facilitate additional donor investments on either a geographic or service component basis.

- *National-level CLS NGOs:* While many of the veteran CLS NGOs examined in the study have the capacity and experience to assume broader responsibilities and expand their present outreach, their specific geographic and other core capacities, institutional mandate and expansion plans, and other institutional features differ substantially. At present, no particular variation of the CBO mediation model is preferable to others; however, refinement of particular models may be recommended in future if ongoing applied research yields conclusive evidence that certain models work best in particular regional or community contexts, or in Bangladesh generally. Accordingly, it is proposed that national CLS NGOs expand proven and preferred CLS and ADR models, and that the results of the various approaches followed be monitored, documented, and evaluated, with a particular focus on *process quality* and *auditing of client service data* maintained by implementing NGOs.
- *Intermediary partner NGOs:* Mid-sized partner NGOs would be trained and monitored by the larger national-level CLS NGOs. To the extent that requisite management capacity exists among the national-level NGOs, the intermediary organizations would also receive funding through them. The intermediary organizations would facilitate and monitor the work of existing CBOs that provide mediation and related CLS services at the community level; establish CBOs in unions where no CLS services are presently available; collect and consolidate data on mediation activity; and help to facilitate more sophisticated M&E systems that involve specialty research and case studies. The intermediary organizations would also provide legal aid support for cases that are best referred to the courts where mediation fails or a particular problem is not appropriate for ADR. Their legal aid role would involve direct referral to BLAST, where BLAST support services are geographically viable, or alternatively to the panel lawyers of certain national-level CLS NGOs that have a record of competent legal aid support. While the recommended expansion structure incorporates steps to monitor process quality, these are secondary to the selection of competent partner NGOs with sufficient community standing and capacity to deliver sound professional services.

- *Community-based Organizations:* CBOs established and/or trained by intermediary partner NGOs—or, in a more limited number of cases, by staff of the larger CLS NGOs—would conduct mediation sessions and support other community-based CLS functions. As discussed under Recommendation 4 (promote CLS sustainability) below, the institutional development of CBOs into independent, self sufficient groups that can organize information sessions, collect pertinent information through client consultations and interviews, initiate and conduct mediation sessions, refer cases to legal aid, and collect and maintain basic baseline and performance monitoring records with modest technical support from intermediary organizations is a definitive mid- to long-term program objective.

RECOMMENDATION 2:

Strengthen CLS through innovations in program quality, institutional capacity, and service outreach

Recommendation 2.1 *CLS Program Enhancement*

Key Findings, Issues, and Opportunities

117. Access to justice strategies in Bangladesh should ideally combine the formal and informal justice sector. While the informal sector in which CLS activities are concentrated offers a variety of advantages over the formal sector, including time and cost efficiency and broader community and societal impact, present approaches will benefit from ongoing review and enhancement to address a variety of issues, including institutional and human resource capacity, sensible division of labor and resources among CLS organizations, persistent inequities involving gender and other power relations, political challenges, and other issues. Examples of priority issues and areas of focus include:

118. *Improved access to justice involves individual support services and broader societal dialogue and change:* Individual client services are a key element of CLS and bring tremendous benefit to beneficiary parties to a court case or mediated dispute. At the same time, many of the religious, cultural, and societal problems that face women and other marginalized populations will not change as a result of individual case results alone. Broader changes depend on education, engagement, and patient dialogue. In some instances CLS providers can fail to see the forest for the trees in concentrating on individual cases while failing to address the broader societal forces that give rise to legal problems. A few CLS organizations recognize this issue and conduct concurrent efforts to engage religious leaders, men, and other persons of influence; however, many organizations do not, and there is an opportunity for improved coordination and strategic planning.

119. *Persistent gender equity issues:* CLS services focus primarily on women's legal rights issues, including family law and basic security. CLS NGOs follow different approaches to ensure that ADR systems and procedures address the gender inequities that can affect the quality of justice rendered by CLS programs. These include women's representation on mediation panels, and broader community education and outreach initiatives that engage male religious leaders and others to foster changes in traditional religious and societal norms. While the study does not

recommend any single approach as having the greatest potential, it is important that an expanded program ensure that all participating organizations appreciate gender issues and take steps to enhance the quality of services, including sharing of experience and lessons learned.

Program Recommendations

120. ***Refinement of ADR Tools and Methodologies:*** The national program strategy should include resources and technical support for the continuous assessment and refinement of ADR approaches, supported by rigorous empirical assessment tools and documentation. It will be especially important for M&E and specialty research findings to be regularly shared with local implementing organizations at all three tiers of the delivery structure, to inform their program planning. While no single CBO mediation model is recommended over others at present, assessing the strengths and weaknesses of different approaches in different contexts on a regular basis can inform future strategic recommendations and points of emphasis. This point is further discussed under Recommendation 5 (strengthen CLS monitoring and evaluation capacity) below.

121. ***Refinement of approaches to addressing gender equity:*** The national program strategy should likewise include scope and provision to study, document, and disseminate knowledge of the various approaches taken by local partner organizations to enhance the gender equity of CLS and ensure that women clients and beneficiary communities can resolve their legal problems through mechanisms that meet the special access to justice needs of women. This approach should include information sharing on the various techniques followed by local partners, including women's participation on mediation panels, special support services to enhance the gender awareness of male and female mediation panelists, and engagement with religious leaders and other persons of influence to promote broader changes in societal values that individual cases cannot address.

122. ***Value of local experience and strategies:*** In the past, some donor agencies have advocated international technical assistance that brings ADR practitioners from other countries to work with Bangladeshi partner organizations. While support of this kind is in all cases well intended, it is sometimes shaped by a view that international techniques are preferable to local models, without necessarily understanding the combination of factors that have influenced local methods. While there is undeniable value in facilitating opportunities for local partners to learn from the experience of others, international models should never be imposed on local partners; rather, local partners should be free to determine what international experience holds greatest potential for adaptation in the Bangladesh context. Bangladeshi partners will further benefit from opportunities to share their experience regionally and internationally.

Recommendation 2.2 *CLS Institutional Enhancement*

Key Findings, Issues, and Opportunities

123. ***Successful expansion of CLS through a nationwide network requires enhanced institutional capacity at every program delivery tier:*** NGO and donor investments in developing institutional capacity among CLS providers are inadequate. There is a need and opportunity to

strengthen program planning, monitoring and evaluation, and financial management and administrative capacity among national level, intermediate, and community-based organizations.

124. ***Planning required for smooth transition in CLS leadership:*** Planning and professional staff development is required to support the transition in leadership from the charismatic founders of pioneering CLS organizations to the next generation of young managers and program specialists. In addition, young lawyers with an interest in CLS now have limited opportunities to gain practical experience; a few programs do exist, but are limited in scope, while the formal legal studies curriculum at university law faculties and private law colleges includes no exposure to CLS activities—with the exception of an extracurricular clinical legal studies program at the University of Dhaka Law Department that was started with support from The Asia Foundation and the Ford Foundation in the 1990s.

Program Recommendations

125. ***Enhancement of institutional and human resource capacity:*** The proposed national strategy should give careful attention to the institutional and human resource development of local partner organizations. While some donors prefer to invest strictly in program activities, in the experience of The Asia Foundation and like-minded donors the success of any program activity is ultimately dependent on the capacity of the implementing organizations. CLS is not a static field, but one that is continuously enhanced by new learning and exchange of experience. It is essential that local partner organizations stay in touch with innovations and that an expanded national outreach program include financial and technical assistance provision for ongoing institutional and human resource development in program planning, M&E, financial management, and other areas.

Recommendation 2.3 *Enhance CLS Outreach*

Key Findings, Issues, and Opportunities

126. ***Donor and NGO coordination is key to effective expansion into new geographic areas:*** While geographic areas that presently lack adequate CLS support can be generally identified and program outreach extended to serve them, variations in specific donor priorities and NGO capacities calls for collaborative strategic planning to determine how best to expand existing services to reach new areas. NGO providers and their donor partners must make sound strategic planning decisions and sensible investment choices. The most successful organizations are not necessarily those that expend the most resources in relative terms. In the experience of The Asia Foundation and other donors, the most successful CLS providers tend to be those capable of establishing sophisticated but cost efficient programs with their own resources before seeking donor funding to refine or expand their work.

127. ***Stimulating public demand for CLS deserves greater emphasis:*** The success of CLS programs and their prospects for transformative impact depend on adequate public awareness to stimulate demand for services. There is a potentially unlimited demand for CLS support in Bangladesh. In a few cases—as for example, where communities adjacent to those in which successful CLS programs are conducted learn about the neighboring program and call for the

extension of services to meet their legal assistance needs—demand is actually voiced through pressure on existing CLS organizations to expand their program activities, or on development organizations with no prior experience in CLS to introduce programs or establish working relations with experienced CLS organizations. In general, however, the study team found that relatively few citizens are aware of CLS services and how to access them, even in those areas with active CLS programs. ADR, legal aid, and other hands-on client services need to be complemented with sufficient funding for extensive awareness raising activities. These strategies must give particular attention to the needs of women, who may be difficult to reach through conventional awareness raising mechanisms.

Program Recommendations

128. ***Strategic approaches to geographic outreach and incremental rollout of the national program:*** The proposed national CLS expansion strategy should be implemented incrementally rather than being immediately rolled-out to full national level. The rollout strategy must take account of a variety of considerations, including:

- The capacity of national-level and intermediary level NGO partners to assume a combination of substantive program and administrative responsibilities;
- The technical support requirements of existing CBOs and CBOs to be established in communities where no CLS services are presently offered;
- The capacity of BLAST and other legal aid organizations to manage the referral of cases to the formal justice sector and to reciprocally refer cases to CBOs for mediation.

129. These and other factors should be taken account of in the detailed project design phase and decisions taken in consultation with local implementing partners (and national-level CLS NGOs in particular) on the rollout of activities on an incremental basis. Strategic planning decisions should take careful note of the special circumstances and needs of the Chittagong Hill Tracts, *char* communities, and other hinterland areas that are home to religious and ethnic minorities or extremely poor communities whose experience and support needs merit special consideration and approaches.

130. ***Greater information outreach to stimulate CLS demand:*** The national strategy should take account of the fact that, while there is a tremendous need for CLS support among the poor, women, and other marginalized populations, the very status of target beneficiaries affects their ability to take advantage of legal support services. Here the combination of general awareness raising, paralegal counseling, specific client support services for ADR and formal justice interventions, and select advocacy activities is especially important. The success of the national program will depend on extensive public information-sharing strategies that will help to acquaint potential beneficiaries with available support services and the steps to be taken to take advantage of them. Again, particular emphasis should be placed on women beneficiaries who are difficult to reach through conventional information sharing strategies. The CLS sector can benefit from innovations in communications and outreach pioneered in other development sectors.

RECOMMENDATION 3:

Enhance interaction between the formal and informal justice system through legal aid support and referral mechanisms, pilot village court programs, and community-oriented policing

131. *The potential for interaction between informal and formal justice systems is not fully developed:* While NGOs and public agencies enjoy collaborative working relations in education, public health, and other development sectors, there are fewer examples in the justice sector. A number of innovations can strengthen public-private synergies. Examples include more efficient legal aid referral of cases for formal litigation that build on BLAST capacity and existing linkages, as well as CLS technical support for enhanced village court capacity and community-oriented policing.

Recommendation 3.1 *Facilitate complementary linkages between alternative dispute resolution and legal aid mechanisms*

Key Findings, Issues, and Opportunities

132. *CLS requires a combination of ADR and formal litigation:* Certain cases, including crimes of violence against women, are not suitable for ADR. In general CLS organizations have had mixed experiences with the quality of formal legal referral services (*pro bono* support of lawyers) on which they depend in taking select cases to court. In many cases, the most experienced and professionally competent lawyers are too busy to undertake significant *pro bono* work. The experience of different CLS organizations in engaging “panel lawyers” varies—some lawyers can be counted on for competent legal support services, while others cannot. At present, the BLAST referral network is the most extensive and its lawyers are arguably the most reliable.

133. *BLAST legal services offer several advantages:* An expanded ADR strategy should be complemented by effective legal aid referral systems and related institutional capacity development measures. While certain CLS providers have developed proven mechanisms to refer cases to competent panel lawyers, there are significant inconsistencies in the quality of legal aid services on which CLS organizations depend. In contrast, BLAST maintains a network of offices across Bangladesh that offers free legal services to poor clients, including registering their complaints and filing and pursuing cases in court. BLAST offices are located in either district or upazila (sub-district) capitals and, as such, are not necessarily known to potential clients located in rural unions. To address this, BLAST has established arrangements with various service-oriented NGOs to refer clients seeking legal aid to their offices. This benefits the CLS NGO by allowing it to offer a valued service to current and potential clients of its micro-credit and other programs, and benefits BLAST by increasing the number of clients accessing its services.

134. Comments by several CLS officials interviewed—including, but not only, those from BLAST offices—indicate that BLAST’s affiliation with area bar associations and selection of influential citizens to serve on the governing boards of unit offices have contributed to BLAST lawyers, and their cases, being accorded a higher degree of respect and urgency by the court than those of their peers. This positive appraisal works to the advantage of poor clients and suggests

that referrals to BLAST are preferable to referrals to panel lawyers in areas that are geographically convenient for clients. While BLAST also offers mediation services, its employee-mediated model conducted in district and sub-district capitals does not offer the advantages of the CBO mediation alternative.

135. ***The threat of litigation is a powerful incentive to mediation:*** The study findings indicate that the threat of litigation can prove a powerful incentive for otherwise reluctant parties to participate in NGO-facilitated mediation sessions and to honor the terms and obligations of the mediated settlements reached. As noted in the earlier discussion of constraints to justice, formal court cases are expensive and time consuming to contest, subject to excessive delays, and susceptible to influence or interference through corrupt practices and/or gender bias. These factors, combined with the uncertainty of the outcome, can motivate an otherwise reluctant party to participate in an ADR process and comply with the result.

The government legal aid fund can benefit from NGO experience: BLAST, MLAA and some other CLS NGOs have actively pursued legal aid funds provided by the government for the poor to defray some of the expense of court cases. Without the assistance of such NGO intermediaries, the poor are unaware of the existence of such support and unlikely to successfully navigate the cumbersome application process involved. For those cases that arise from failed or lapsed mediation sessions, the NGO can provide valuable information to the court to assist in its fact-finding process. CLS NGOs acting in this bridging role have relevant knowledge to offer that can improve the policy framework supporting government legal aid services.

Program Recommendations

136. ***Reciprocal linkages between CBO mediation and legal aid:*** The national CLS program should facilitate complementary linkages between CBO mediation and legal aid mechanisms to be sure that legal disputes are resolved through the formal or informal procedures that are best suited to the particular case. In some cases, this will involve referring cases that are not suitable for mediation directly to the formal court system. In other cases it will involve referring cases to court that could not be resolved through ADR efforts undertaken in the first instance, or providing opportunities for cases that were originally recommended for litigation to be rerouted to mediation forums.

137. ***Increased legal aid referrals and reduced mediation services for BLAST:*** Given the proven competence of BLAST in delivering quality legal aid services through a national network that is linked to the Bangladesh Bar Council, it is recommended that BLAST assume a primary role in extending legal aid services to a national CLS network. It is also proposed that BLAST gradually reduce its practice of in-house mediation service and focus its core capacities on formal legal aid services. CLS NGOs would refer cases to BLAST for formal litigation, while BLAST would in turn refer cases to CBOs for mediation. In situations where BLAST has yet to establish offices in the geographic areas to which the national CLS network extends services, CLS NGOs would draw on alternative panel lawyer services.

138. BLAST and other legal aid providers should encourage clients to attempt a mediated settlement of their disputes in the first instance. The mediation sessions should not be conducted in BLAST offices, but rather in the parties' home communities if CBO mediation services are

available. Since community-based mediation has sustainability and social change advantages, it should be favored over BLAST’s employee mediator approach where geographically convenient for the client, and a practice of “reverse referrals” from BLAST offices to partner NGOs should be encouraged. BLAST is contemplating opportunities for a nation-wide program to develop a CBO-based mediation program that would be linked through intermediary NGOs.

Recommendation 3.2 *Undertake a small-scale pilot initiative to facilitate and assess the interaction of CBO mediation programs offered in select unions that have active village courts programs*

Key Findings, Issues, and Opportunities

139. *Further examination is needed of the role of village courts in improving access to justice:* While debate persists regarding the value of strengthening the capacity of local elected officials to competently take up their statutory village court functions, there is value in supporting select pilot initiatives that engage CLS NGOs to provide training and technical support and to monitor implementation and outcomes. The study identified a number of factors that arguably make village courts a second-tier alternative for expanding access to justice to the poor. These include the limitations of the current enabling legislation for both village courts and arbitration councils, the 2006 Village Court Act. Those NGOs that have engaged the village court mechanism have developed a keen understanding of these statutory limitations and how the Act could be revised to better serve its intended purpose.

140. At the same time, the current efforts of MLAA and the proposed European Commission project to strengthen the village court mechanism deserve serious consideration—not least because competent village court administration would contribute to the sustainability of CLS services and could potentially play a strong complementary role. In addition, there may be circumstances under the proposed national outreach network in which potential partner NGOs are scarce or where larger CLS NGOs are reluctant or unable to establish a presence in a particular area. These areas may be candidates for village court activation as a less expensive, procedurally more flexible, and geographically convenient alternative to litigating disputes in the formal courts.

Program Recommendations

141. *Establish a pilot project to assess effectiveness and sustainability of interaction of CBO mediation and village courts:* Past and ongoing interventions to “reactivate” village courts as a viable venue for community members that seek to resolve disputes fall into two broad categories. In the first, awareness raising activities are conducted in the community and training given to UP members (in particular the UP chairperson) on village court procedures and relevant regulatory provisions under the *Village Court Act 2006*. There are few indications that village courts function effectively with this limited level of support. In the second, these steps are supplemented by full-time court assistants that facilitate periodic awareness activities, prepare extensive related court paperwork, observe village court proceedings, and offer guidance to UP and citizen judges as appropriate. While the second category of intervention features efforts to ensure greater access to and fairness in the village court process, the greater the volume of court

cases the greater the need for court assistants who are at present externally funded. CBO mediation services offered in the same area may be able to function in a complementary role by contributing to the effectiveness and sustainability of both services, with reduced external funding requirements.

142. At present, the role that a village court might play in a union with successful CBO mediation services is uncertain. Would village courts become the preferred venue for failed mediations in lieu of the formal courts? Could legal awareness raising activities in such unions promote the village court as a next step if mediations fail? What result might this have for the caseload of the village court in terms of case types and volumes, and would it reduce the burden of court duties for busy UP members and of court paperwork for court assistants? Based on program designs informed by the applied research strategies of the proposed apex institution or external consultant inputs, the knowledge gained from a village court pilot could suggest steps toward greater effectiveness and sustainability in CLS programs, and fill niche program needs that would complement the planned activities of the European Commission. The pilot would also support a unified CLS NGO voice on needed revisions to the *2006 Act* and work with the EC and other concerned parties to advance this process in concert with the government of Bangladesh.

Recommendation 3.3 *Community-oriented Policing*

Key Findings, Issues, and Opportunities

143. ***Public security issues and community-police relations:*** The public security environment in Bangladesh has deteriorated in recent years, with an increase in robbery, extortion, assault and intimidation, and crimes of violence against women. Politically motivated violence also escalated in recent years, with a series of unresolved bombing and other attacks on political leaders, journalists, and businesspersons. Additional concerns were raised in 2005 by incidents of violence that are speculatively linked to the activities of extremist groups. The failure of the police and other law enforcement authorities to bring criminals to justice prompted citizens to resort increasingly to brutal vigilante actions against suspected criminals.

144. A baseline program planning survey of community-police relations conducted by The Asia Foundation in 2004 found that citizens have little trust or confidence in the police and prefer to exhaust alternative remedies before seeking police assistance. Police have little sense of professional duty towards citizens, while citizens in turn have a limited appreciation of the challenges that police face in performing their duties. These challenges include inadequate manpower, lack of professional training, equipment, and operating resources, low salaries, long hours in difficult working conditions, and distracting political pressures and demands. Tensions and misunderstandings in community-police relations are exacerbated by lack of opportunity for citizens to engage in good faith dialogue with police on issues of common interest.

145. To avert the risk of violence and associated governance problems, citizens and law enforcement agencies should be presented with alternative public security options that are grounded in the positive values of human rights and democratic governance. Among these, community-oriented policing (COP) aims to reshape traditional police management and

operational strategies through facilitation of collaborative working relations between citizens and police. By creating informal space for citizens and police to discuss their respective views and expectations and matters of common interest, COP helps to make police more responsive to citizen interests. Higher standards of police service in turn nurture mutual trust and respect between police and citizens, improved communication and collaboration, and increased public satisfaction with police services—all of which translates into safer communities.

146. ***Political space for criminal justice reform:*** The rising incidence of crime and violence has captured the attention of domestic observers and the international community. While public authorities have made only modest progress in bringing perpetrators of crime and violence to justice, the criticisms leveled by observers have prompted reflection among government officials and the police. National and district level police officers consulted by the Foundation through its baseline study and subsequent dialogue are acutely conscious of their public image problem and of the need for action to restore the reputation of the police. Senior government officials concede that serious law and order problems exist and are prepared to discuss options and opportunities in good faith.

147. ***Complementing top-down reform efforts with bottom-up interventions:*** Through effective information sharing and advocacy efforts, best practice pilot activities will help to stimulate a national call for the adoption of COP by the police, with support from civil society, the media, and other facilitating agents. In addition, COP activities can establish practical linkages for monitoring the local-level impact of efforts of UNDP, DFID, and other development partners to strengthen the broader institutional capacity of the police. They can also create effective communication channels that will allow national criminal justice reform programs to take account of citizen interests, perspectives, and expectations at the grassroots.

148. ***Adapting a best practice model for application in Bangladesh:*** Since September 2003, The Asia Foundation has utilized its own resources to implement a sequenced strategy for the introduction of pilot COP programs, adapting for application in Bangladesh a best practice model that it implemented in collaboration with local partners in Indonesia. Work in Bangladesh builds on decades of Foundation support for the work of local partner organizations in human rights, community legal service delivery, conflict management, and legal empowerment in cooperation with a variety of development partners. The three-step approach of work to date has covered the following phases:

Phase One: Preliminary Fact-finding

149. Work commenced with a fact-finding process in which Foundation program staff and NGO partners convened key informant interviews, focus group discussions, and roundtable meetings in communities across the country. These activities canvassed the views, experience, and expectations of police, local and central government officials, women's rights activists, lawyers and judges, religious leaders, businesspersons, farmers, laborers, students, and housewives regarding the local law and order situation and relations between police and citizens. Discussions affirmed deep concerns among police and citizens alike regarding the present state of law and order in Bangladesh and the gap in understanding, trust, and mutual respect between citizens and police. Concurrent

dialogue at the national level canvassed the views and inputs of senior police and government officials and secured the endorsement of police headquarters, the Ministry of Home Affairs, and the Prime Minister's Office for the work of the Foundation and its local partners.

Phase Two: Baseline Survey of Community-police Relations

150. The fact-finding process informed the design of an empirical baseline survey study on community-police relations that was administered among police, local elites, and ordinary citizens in three *upazilas* in Bogra, Jessore, and Madaripur Districts. The survey was designed and administered by a team of Foundation program staff, survey research specialists, and staff of two long-term local partners of the Foundation and a new local partner—Banchte Shekha, Madaripur Legal Aid Association (MLAA), and Light House—in *upazilas* in which pilot COP programs would be launched and in comparable control *upazilas*. It probed:

- Police and community perceptions of the law and order environment;
- Public security issues of particular concern to the local community;
- Perceptions of the respective values, motivations, and expectations of police and citizens;
- Existing examples of community-police collaboration;
- Present knowledge of community policing; and
- The prospect of collaborative working relations between police and citizens.

Phase Three: Pilot Community-oriented Policing Programs

151. The findings and recommendations of the baseline survey informed the design and implementation of pilot community policing programs that were concurrently launched in Bogra, Jessore, and Madaripur, in collaboration with NGO partners. The NGOs are responsible for managing program funds, facilitating local dialogue on COP, and coordinating activities in the three *sadar upazilas* of Bogra, Jessore, and Madaripur. While the facilitating, monitoring, and reporting role of NGO partners will continue, community-police forums (CFPs) are expected to assume an increasing leadership role as work proceeds.

152. CPFs are a representative mechanism for specific program activities of importance to all stakeholders. They have been established in pilot areas at the district level, municipality or union level, and ward level. A CPF includes 15 to 25 members, headed by a locally elected representative at the sub-district level, or by the Superintendent of Police at the district level. Other members include at least one police officer, one Ansar (government-funded security officer of lower rank than police), and one representative of the facilitating NGO, together with school principals and teachers, business persons, religious leaders, representatives of women's organizations, farmers, and other community representatives.

153. The preliminary steps taken by NGO partners include:

- Mapping of law and order problems of particular concern to local communities;

- Establishing trust relations with the police and members of the community;
- Introducing the concept of COP through public meetings, rallies, music, street theater, and simple publications;
- Selecting specific target communities as a focus of program activities;
- Establishing CPFs.

154. Local partners are encouraged to adjust and experiment with the core methodology to reflect the circumstances, needs, and interests of the individual communities and CPFs. The pilot program phase aims to secure police and citizen commitment to COP, establish CPFs as a representative mechanism of importance to all stakeholders, and confirm the strengths and weaknesses of particular approaches—with the objective of establishing a foundation for issues-specific program activities that will build on the pilot activities.

155. The next phase of work aims to yield examples of the practical benefits that flow from collaboration between citizens and police and improvements in community security. These are in turn expected to stimulate broad-based demand for COP from police, civil society, the media, and other interested groups.

156. ***COP progress to date:*** In addition to regular project site visits by Asia Foundation program staff, the Foundation hosts periodic meetings in which local partners shared experience and lessons learned in the early months of COP implementation, with a particular focus on challenges faced and the steps taken to address them. The Foundation’s preliminary pilot program work has yielded encouraging preliminary results and valuable lessons that will inform ongoing work. Examples include:

- Establishment of relationships of trust between NGO partners, police, and community stakeholders;
- Commitment to the concept of COP among citizens and police;
- Establishment of publicly acclaimed CPFs in the three program areas;
- Examples of the practical benefits that result from collaboration between citizens and police in addressing drug addiction, gambling, harassment of women, and other issues of concern to the community; and
- The broader interest that pilot program activities have generated among police, government officials, civil society organizations, and the media beyond the program sites.

157. NGO partners report some striking anecdotal examples of early progress toward narrowing the gap in understanding and respect between citizens and police. These include:

- Participation by police superintendents and other senior officials in events organized by community members at the ward level, signaling a respect for the merit and substance of community interests that was absent from earlier police attitudes;
- Readiness of police and citizens to devote voluntary time to the formation and activities of community-police forums;
- Willingness of representatives of different political parties to lay aside political differences and work together as members of CPFs; and
- Frequent calls from police and citizens in neighboring areas to launch COP programs in their localities.

158. The basic COP model served as the basis for an expanded election violence prevention program to which DFID and five other bilateral donor agencies and diplomatic missions contributed as part of the national election program strategy of the Election Working Group.

Program Recommendations

159. *Expand community-oriented policing programs to establish a model practice for improving relations between police and the citizens in Bangladesh and promoting mutual cooperation on crime prevention and public security:* Building on the Foundation’s preparatory work to date and complementing the DFID-UNDP criminal justice reform program and the recent program plans of the Royal Netherlands Embassy (RNE) and GTZ to provide technical and other support for community policing initiatives with a particular focus on the rights of women, an expanded program would facilitate the adaptation and validation of an innovative COP model in Bangladesh and lay the groundwork for future expansion through multiple donor investments. The strategic focus of work would ideally include: (i) specialty program activities conducted by community-police forums that address law and order and security issues of particular concern to communities; (ii) national-level information sharing and advocacy activities to raise awareness of COP and stimulate demand for the institutionalization of COP from the Bangladesh police, with support from civil society and the media; and (iii) establishment of reciprocal linkages between local-level COP activities, the RNE-GTZ community policing initiative, and national-level criminal justice reform programs, which will serve as mechanisms to monitor the impact of national reform initiatives on police services and security at the grassroots and to provide channels for citizen voice in national-level criminal justice reform initiatives.

RECOMMENDATION 4: **Promote CLS sustainability**

Key Findings, Issues, and Opportunities

160. *Diverse views exist on achieving optimal sustainability in a challenging context:* In developed and developing countries there is a general understanding that legal support services that improve access to justice by the poor and other marginalized populations are a public good for which citizen demand and professional support requirements are very difficult to meet without a combination of public and private financial contributions. In fact, there is no country in the world known to the research team in which CLS programs comparable to those implemented in Bangladesh are self-financing. Notwithstanding this challenge, it is important to design and implement strategies that hold the greatest potential to be sustainable.

161. The very concept of sustainability of community legal services can be viewed in different ways, each depending on “what” is being sustained and “how” resources support this. For most donors, the concept of sustainability typically refers to the ability of a local partner organization and recipient of funds to continue to provide services after donor funding ends. This view often seeks to develop alternative funding sources from users of the services, from the government of the host nation, or from private donations. The focus is on continued funding. Another route to

sustainability involves the adoption of the services in question by a financially established institution—for example a government agency. A third option replaces this narrower concept of sustainability with sustainability in a broader context—that is, can the objective of the services be advanced in the absence of external donor or local funding?

Program Recommendations

162. ***Three potential routes to sustainability:*** The varied range of community legal services suggests that there is some potential for all three routes to sustainability, depending on the aspect of CLS being considered. All three routes should be explored as part of the proposed national program expansion.

- ***Sustainability via alternative funding:*** Increasing access to government legal aid funds and seeking a higher per-case allowance for the poor can defray part of the costs for legal counseling and representation in formal court cases that are currently supported by donors. While BLAST has been the most successful in accessing these funds, other organizations such as MLAA access them to pay costs for their “panel” lawyers.
- ***Sustainability via alternative institutions:*** This approach could involve encouraging large national or regional social service NGOs to follow the BRAC approach in offering legal services to their clients and taking advantage of pre-existing physical and community group infrastructures to do this for minimal costs that can be borne internally. As noted in the discussion on ADR, social service organizations that offer legal services benefit from an enhanced reputation in the community and may attract new clients for micro-credit and other services.
- ***Sustainability in objective:*** In the earlier section on ADR approaches, the advantages of CBO-administered ADR in effecting social change at the local level were discussed. These same changes in values arguably make it more likely that community members will continue to conduct ADR on their own, accept ADR settlements, and/or enforce compliance with these settlements after donor-funded NGO assistance has ended. The experience of BLAST’s GKNHRIB project suggests that village-level CBOs are likely to continue to operate beyond the close of a program. CBO leaders originally engaged on a voluntary basis and have incentives to remain involved beyond the formal close a project, including social recognition. Changes in community values can also have a positively effect on the demand for CLS, in the sense that as women’s legal rights are increasingly recognized and accepted by male members of the community, violations of those rights are likely to decrease. The proposed three-tier national program delivery structure is designed to emphasize this route to sustainability through its operation, and envisions a phased reduction in the level of externally funded support required to keep CBO mediation panels functioning, with pre-determined indicators of CBO sustainability guiding the pace of funding reduction. Sustainability can be further enhanced by facilitating formal and informal linkages between local CBOs and urban-based NGOs and government officials, as well as by facilitating an advocacy and information sharing role by the media.

RECOMMENDATION 5:

Strengthen CLS monitoring and evaluation capacity

Key Findings, Issues, and Opportunities

163. *Monitoring and evaluation capacities vary widely:* Capacity and innovation vary significantly among CLS organizations, but virtually all CLS providers have a basic M&E capacity on which to build. While most M&E methodologies involve counting basic outputs, there is a growing appreciation among CLS providers of the importance of sound M&E systems and procedures, and examples of excellent collaboration between donors and CLS organizations in designing and implementing complex M&E methodologies. The more sophisticated monitoring protocols tend to place substantial time and human resource demands on CLS organizations. There are few existing examples of effective methodologies for exploring the linkage between improved access to justice, enhanced governance standards, and poverty reduction, but a growing appreciation of the importance of investigating and better understanding them.

Program Recommendations

164. *Balancing sophistication of analysis with ease of application:* The success of the proposed national CLS strategy will depend on the design and application of sound M&E tools and methodologies at every administrative tier of the program, from experienced national-level CLS organizations, through intermediary NGOs, to the CBOs tasked with the day-to-day delivery of legal services. The M&E methodologies should strike a balance between sophisticated data collection and assessment tools that render information superior to that available at present and ease of application to reduce some of the burden that is currently placed on CLS organizations. Most importantly, the M&E strategy should have a very clear focus on program review and refinement and future program strategies, so that the information collected will feed directly into collaborative program planning by implementing organizations and donor partners. DFID and other donors are encouraged to assume a more hands-on interactive role in the review of local partner program results, to the extent that competing human resource and administrative demands permit.

165. *Standardized M&E tools:* It is further recommended that the national program introduce a reasonable degree of standardization in the M&E tools applied. A standardized approach will help to streamline the data collection and reporting responsibilities of implementing organizations, and the ability of donors to invest in the program and to measure the impact of program interventions to which multiple donors may contribute—whether through pooled funding or commitment to discrete geographic outreach or thematic elements of a national strategy. There are excellent precedents for standardized M&E systems from the experience of donor consortiums established in the 1990s to streamline working relations with MLAA and Banchte Shekha. While this approach requires a degree of flexibility on the part of individual donors, significant benefits derive from such an approach. The M&E challenges to be taken account of include evaluating case type categorization schemes to avoid obscuring the root cause

of disputes; ensuring the quality of the mediation process and statistical data collected; assessing the duration of case settlements; integrating more sophisticated means to assess the links between CLS, poverty outcomes, and governance reforms; and ensuring that M&E efforts inform continuous program refinement and future strategic planning initiatives.

166. ***Ensuring process and data quality:*** A tension exists between maintaining the quality of CLS program activities and achieving a rapid expansion through partner organizations. Some CLS NGOs, in particular MLAA, have begun to address this tension through the use of standardized techniques for monitoring process quality, which other CLS organizations could benefit from. Monitoring and evaluation efforts at the intermediary NGO level should focus on recording outputs in a variety of categories. These “volume counts” typically include cases registered, cases settled or abandoned, and cases referred to the formal justice sector, with data often disaggregated by case types and/or gender. CLS NGOs and/or their donor partners analyze the data—in many cases drawing on consultant inputs. Since the quality and consistency of data collection by intermediary NGOs varies, it is recommended that a standardized system be established to periodically audit the reliability of the data collected.

167. ***Monitoring settlement duration:*** Extensive field visits and interviews with larger CLS NGOs by the study team failed to identify NGO records that would support a reliable assessment of the average duration of settlements reached under the various ADR approaches. While many NGOs conducted follow-up visits for a period of six months following a mediated settlement, they have no mechanisms or adequate resources for systematically recording any settlement violations that occur beyond the six-month period. Explanations for the lack of long-term follow up include reliance on the complainant to register a new complaint or on community members to detect instances of non-compliance and alert the CBO; and the difficulty of locating the original complainant—especially if they were members of the landless poor, who frequently relocate. While case-by-case follow-up may be impractical, the proposed national strategy should incorporate a sample-based evaluation approach that could yield valuable data on differences, if any, in settlement effectiveness among the CBO mediation models followed by different NGOs.

168. ***Surveying poverty and governance outcomes:*** Similarly, the use of case statistics, focus group discussions, and individual interview data gained through the 24 field site visits does not offer sufficient grounds for a conclusive statement on how CLS results in positive poverty reduction and governance reform outcomes. These data do suggest some linkages, such as a reduction of material poverty for individual female complainants who successfully employ ADR processes to gain maintenance or dower payments legally owed to them. A well designed and executive survey approach is recommended to determine whether a greater impact on generalized material poverty is being achieved among community members in areas with active CLS programs, or whether CLS is having a cascading positive effect on governance reform efforts. The present legal empowerment work of The Asia Foundation and ADB in Bangladesh, Indonesia, and Pakistan should inform this component of an expanded national CLS program. These issues are further discussed under Recommendation 7 (support legal empowerment strategies that link CLS with broader sectoral development initiatives) below.

RECOMMENDATION 6:

Facilitate enhanced communication, coordination, and collaboration among CLS organizations and donors

Recommendation 6.1 *Enhance dialogue and information sharing among CLS NGOs*

Key Findings, Issues, and Opportunities

169. *Few opportunities exist for dialogue and information sharing among CLS organizations and program specialists:* The busy principals and program staff of CLS organizations have few opportunities to pause and reflect on lessons learned from their experience, and even fewer opportunities to share experience with counterparts in other organizations. While regular interaction occurs between national-level organizations and the smaller intermediate and community-level organizations to which the former provide training and technical support, the dynamic of this interaction tends to be different than the sharing of experience as an end in itself. The Asia Foundation has facilitated a variety of forums in which local NGO partners working on community-oriented policing, election, women's empowerment, local economic governance, and other programs meet and share experience in an informal setting. Its partners welcome these opportunities and consistently report that the exchange of experience is very productive. Beyond the basic value of information sharing in its own right, interaction of this kind is important in a competitive funding environment to avoid duplication of effort, divide responsibilities in sensible ways that reflect the unique capacities of different organizations, and explore solutions to common challenges.

Program Recommendations

170. *Value-added incentive approach to coordination:* The proposed national strategy is based on a three-tiered implementation structure that will involve working relations among large numbers of national-level CLS organizations, intermediary NGOs, and CBOs. While the success of the strategy is entirely dependent on productive working relations among the participating organizations, there is potential for communication, information sharing, coordination, and collaboration on a scale that vastly exceeds basic administrative cooperation. A successful coordination strategy will involve more than simply insisting that the busy principals and program staff of local partner organizations collaborate at the instance of donors. It is recommended that coordinating activities serve a value-added incentive role that is recognized and appreciated by local partners. Already, desire exists within some CLS NGOs to work towards a coalitional arrangement that would foster operational coordination when needed, develop shared policy positions and present a unified voice in interactions with government.

171. *Instilling a strong sense of ownership:* In the case of the national CLS strategy, it is important that local partners have a sense of ownership of the coordination activities. A complex program includes many administrative details that can be introduced and discussed in local partner meetings, but such gatherings are bound to be quite sterile unless NGO partners assume a leadership role in setting agendas and facilitating discussion. Drawing from Foundation

experience, it is proposed that the apex institution(s) assume responsibility for scheduling preliminary meetings of local partners, setting the agenda in collaboration with national-level CLS organizations and producing minutes and follow-up agendas. Local partners should then gradually assume responsibility for hosting meetings on a rotating basis and setting agendas to reflect priority areas of interest—possibly a combination of program and administrative issues. The detailed strategic planning process in which national-level organizations will play an active role will help to lay the groundwork for subsequent information-sharing meetings. These meetings could initially be scheduled on a quarterly or semi-annual basis, with the schedule kept flexible to reflect partner interest and priorities. To strengthen the multi-tiered network structure of program delivery and ensure that intermediary NGO and CBOs benefit from information sharing opportunities, coordinating meetings should also be held at the divisional or district level. The national strategy should also include a Bangla language website, periodic partner bulletins, and other electronic and written information sharing tools and products.

172. *Opportunities for law and social science students to support CLS:* As noted previously, the national expansion strategy should also help to facilitate opportunities for law and social science students to contribute to information sharing and coordination through practical exposure to CLS work through study programs and internships with CLS organizations. The Dhaka University Law Department has a particular interest in opportunities of this kind, as well as relevant experience. Work with Dhaka University would be a natural starting point, with relations eventually extended to other university law faculties and select private law schools.

Recommendation 6.2: *Enhance donor coordination and harmonization*

Key Findings, Issues, and Opportunities

173. *Commitment but few practical arrangements for donor coordination:* Busy donor agencies face the same challenges as CLS organizations in creating time and opportunities to meet and share experience, discuss common challenges, and operationalize their commitment to improved coordination of strategies, resource investments, substantive program activities, and geographic outreach that until recently was increasingly affirmed but inadequately followed-up on in meetings of the LCG Justice Sector and Human Rights Working Group. The recent harmonization effort coordinated by task force headed by DFID provides an excellent base for enhanced donor coordination of CLS support and the advancement of mutually reinforcing linkages between the formal and informal justice systems.

Program Recommendations

174. *Practical strategies for enhanced donor coordination:* With a growing number of donor agencies providing support for access to justice initiatives in Bangladesh, the community of donors will benefit from the same enhancement of information sharing, coordination, and harmonization efforts as that recommended for local CLS organizations. Coordination efforts can include the standardized M&E systems described above, as well as a logical division of labor among geographic areas, range of CLS services, or independent or joint support to individual organizations.

- *Harmonizing donor reporting:* The standardization of M&E tools noted above referred to efforts to harmonize monitoring data requirements, financial and program reporting formats, and donor reporting schedules for particular CLS NGOs. The broader results of the donor harmonization effort should ideally be designed to meet the reporting needs of the several donors that contribute to a national program, as well as other donors that fund additional CLS-related programs through the same or other NGOs. This effort, though labor intensive, would respond to the complaint registered by many CLS organizations that multiple reporting requirements place excessive burdens on staff time and associated resource allocations.
- *Harmonizing donor investments:* Anecdotal evidence noted in the course of the study suggests that improved donor coordination on investments in CLS could yield benefits in coverage and continuity that would prevent unnecessary resource competition among local partner organizations and better support long-term social change impact. Some discussants reported an overlap in CLS activities being funded in the same union by different donors. Unlike legal awareness activities, which can be usefully duplicated by different organizations in the same area and contribute to a more positive outcome, work by NGOs to establish community-based mediation services is bound to suffer where unnecessary duplication occurs. For example, CLS NGOs seek to involve persons of influence from that community, including the UP chairpersons and members, citizen activists, teachers, and religious leaders, to support their mediation or other legal service activities. When two different organizations are funded to introduce ADR in the same union, they compete for the time and often the public support of these individuals. In some cases, prospective leaders may insist that organizations competitively “bid” for the benefit of participation to which the former should ideally commit as a valued public service without significant consideration of monetary benefit.

175. These and similar situations could be avoided by better coordination on the location of donor investments. Another area for improved coordination is timing of project investments. Many NGOs are unable or unwilling to continue CLS activities when project funding ends, contributing to a loss in momentum for change in community attitudes and values. Donors with an interest in funding CLS may wish to build on prior investments by identifying locations of previous activity that could yield measurable changes in community attitudes and behaviors within a shorter time frame than communities where no CLS programs have been implemented. With further refinements, the mapping database compiled during this study could serve as a tool to guide more effective donor investments.

RECOMMENDATION 7:

Support legal empowerment strategies that link CLS with broader sectoral development initiatives

Key Findings, Issues, and Opportunities

176. In the past, the typical response to the legal problems of poor, women, and other disadvantaged populations has been to provide legal aid and alternative dispute resolution. Beyond these basic CLS interventions, decades of experience in providing conventional legal

services and a critical assessment of those programs have led some organizations to undertake “legal empowerment” programs that include legal services that are integrated as part of a broader community development strategy. This transition to legal empowerment is based on an understanding that even when conventional legal service providers are keenly committed to providing legal counseling and assistance, their projects may barely dent the broader legal, administrative, and governance needs of target populations. In many instances, these projects miss opportunities to address the underlying legal, administrative, and governance constraints that prevent vulnerable groups from enjoying the benefits of sectoral development initiatives in education, public health, local governance reform, resource management, or other areas. While conventional legal service interventions clearly benefit individuals and communities at large, individual client service benefits invariably take time to collectively begin to register on broader poverty reduction and improved governance standards, in the sense that advancement of the rights and interests of individual beneficiaries only gradually contribute to broader awareness raising and collective impact on societal change. CLS aims to provide immediate legal assistance to individuals by ensuring the principles of equality before the law and due process, while associated higher-order legal empowerment initiatives complement conventional CLS activities by helping to equip entire communities—and women and disadvantaged groups in particular—to use legal and administrative processes and structures to access services and opportunities.

177. In the aforementioned 2001 study of *Legal Empowerment for Supporting Governance and Poverty Reduction* undertaken on behalf of the Asian Development Bank, The Asia Foundation examined the impact of legal empowerment—which was then defined as *the use of law to increase the control that disadvantaged populations exercise over their lives*—in promoting good governance and reducing poverty. The study found that legal empowerment can help to advance rights, governance standards, and poverty alleviation. In particular, it found that legal empowerment is most effective when pursued through integrated approaches that engage partner populations at the community level and when civil society organizations work in cooperation with government agencies and officials. Based on the findings and recommendations of the regional study, the Foundation has supported the legal empowerment activities of local partner organizations in Bangladesh, Indonesia, Pakistan, and other countries, and tested the recommendations of its earlier study through a variety of pilot program initiatives. In 2006, the Foundation commenced a successor three-country ADB project on *Legal Empowerment for Women and Disadvantaged Groups*, which is being administered by the Bangladesh office. The project features pilot projects that integrate legal empowerment programs within existing ADB loan facilities and analyze and document their impact through specially developed baseline instruments and M&E protocols.

178. To date most donors have tended to support CLS activities as a response to the urgent legal rights and access to justice problems faced by the poor, women, and other marginalized populations, without reference to their broader country program strategies and the potential implications of access to justice constraints for the pace and progress of national development efforts in different sectors. While this approach is perfectly sound, a failure to take account of the relationship between access to justice and broader sectoral development strategies may reflect a lost opportunity. Research affirms that integrated CLS programs that combine legal services as part of a broader sectoral development strategy can be highly effective. For example, Asia Foundation and USAID-supported population management efforts by family planning NGOs in

Bangladesh in the 1990s were strengthened by integrating them with legal services, and vice versa.

179. Family planning NGO staff received legal training that they in turn imparted to their partner populations. They also coordinated community mediation sessions and other law-oriented services. By comparison with legal services that were introduced in isolation, communities whose members were already familiar with family planning NGOs readily accepted the integrated CLS programs. For those exposed to CLS for the first time, the sensitivities raised by the concept of women's legal rights were comparable to those raised a decade earlier by family planning and the notion of a women's right to exercise reproductive rights. In stimulating community acceptance of women's legal rights and the need for greater gender equity in traditional *shalish* dispute resolution proceedings, family planning NGOs drew on the goodwill established through many years of contact with the communities. Ultimately, women who became aware of their rights achieved greater leverage in asserting their autonomy in personal reproductive health decisions.¹⁵ In collaboration with ADB, the Foundation is supporting similar legal empowerment programs in the water sector in Bangladesh, and in other sectoral program contexts in Indonesia and Pakistan.¹⁶

Program Recommendations

180. DFID and other donors are encouraged to explore opportunities to link CLS programs with their broader investments in sectoral development activities in the fields of education, public health, enterprise development, environmental conservation and resource management, and other areas. The proposed national expansion strategy would serve as the basis for select pilot initiatives to integrate CLS activities in sectoral development activities, drawing on the technical support of national-level CLS organizations and intermediary NGO partners.

181. Exploration of the complementary linkages between CLS and broader sectoral development initiatives will require thoughtful dialogue and information sharing between CLS and governance specialists in donor agencies and their counterparts in different sectoral development units. Experience suggests that busy development professionals have little time to shift focus from the day-to-day demands of their work in a particular sector to consider the relevance of access to justice and legal empowerment for the advancement of their work. In fact, many of the constraints that affect the pace and progress of sectoral development work in education, public health, enterprise development, agriculture, resource management, or other areas are rooted in rights, access to justice, or governance. Combined CLS and legal empowerment strategies can help to address these issues.

182. In addition, the exploration of mutually reinforcing linkages between CLS and sectoral development work can also help to address the resource constraints that affect the sustainability of CLS activities. Integrated strategies have the potential to tap resources allocated for sectoral

¹⁵ Karen L. Casper and Sultana Kamal, *Evaluation Report: Community Legal Services Conducted by Family Planning NGOs*, a report prepared for The Asia Foundation's Bangladesh office (Dhaka: March 1995).

¹⁶ Asian Development Bank, *Legal Empowerment for Women and Other Disadvantaged Groups* (2005-07), ADB Technical Assistance 6248-REG.

development activities, where it can be demonstrated that investments in complementary CLS strategies will help to advance sectoral development goals.